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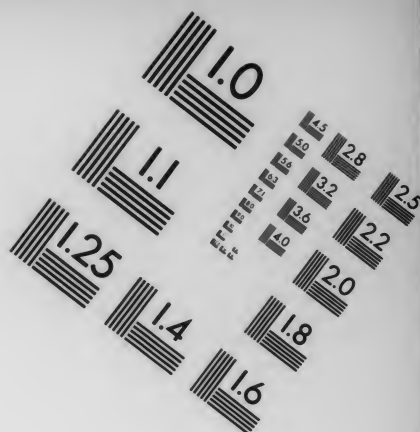
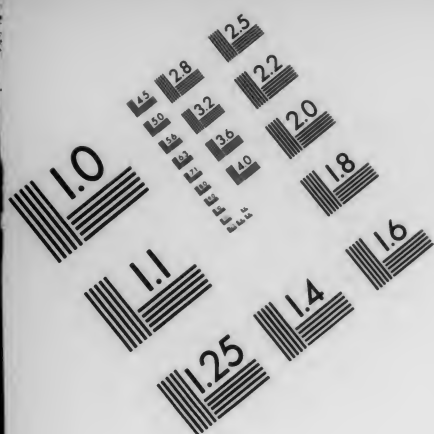


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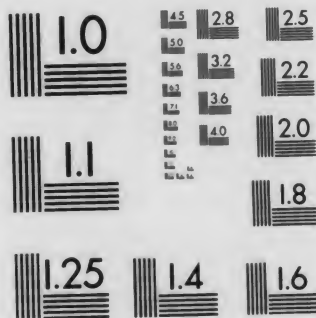
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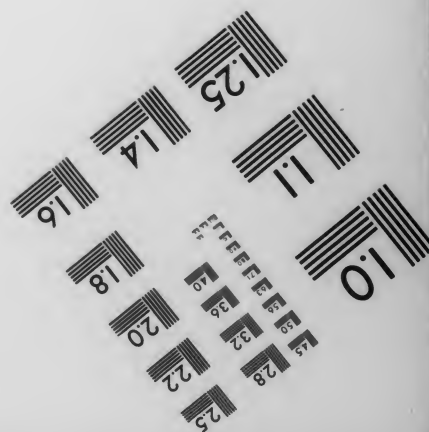
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THE HISTORY OF  
PARLIAMENTARY TAXATION  
IN ENGLAND

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SHEPARD ASHMAN MORGAN

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**THE HISTORY OF  
PARLIAMENTARY TAXATION  
IN ENGLAND**

Williams College  
DAVID A. WELLS PRIZE ESSAYS

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Number 2

THE HISTORY OF  
PARLIAMENTARY TAXATION  
IN ENGLAND

BY  
SHEPARD ASHMAN MORGAN, M.A.



PRINTED FOR THE  
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HENRY LOOMIS NELSON  
OLIM  
PRECEPTORI  
D. D. D.  
DISCIPULUS  
HAUD IMMEMOR  
S. A. M.

## PREFACE

THIS is the second volume in the series of "David A. Wells Prize Essays" established under the provisions of the bequest of the late David A. Wells. The subject for competition is announced in the spring of each year and essays may be submitted by members of the senior class in Williams College and by graduates of not more than three years' standing. By the terms of the will of the founder the following limitation is imposed: "No subject shall be selected for competitive writing or investigation and no essay shall be considered which in any way advocates or defends the spoliation of property under form or process of law; or the restriction of Commerce in times of peace by Legislation, except for moral or sanitary purposes; or the enactment of usury laws; or the impairment of contracts by the debasement of coin; or the issue and use by Government of irredeemable notes or promises to pay intended to be used as currency and as a substitute for money; or which defends the

endowment of such 'paper,' 'notes' and 'promises to pay' with the legal tender quality."

The first essay, published in 1905, was "The Contributions of the Landed Man to Civil Liberty," by Elwin Lawrence Page. The subject of the following essay was announced in 1906 by the late Henry Loomis Nelson, then David A. Wells Professor of Political Science. As first framed it read, "The Origin and Growth of the Power of the English National Council and Parliament to Levy Taxes, from the Time of the Norman Conquest to the Enactment of the Bill of Rights; Together with a Statement of the Constitutional Law of the United States Governing Taxation." Mr. Nelson subsequently eliminated the last clause, thus restricting the field of the essay to English Constitutional History. The prize was awarded in 1907. Since the death of Mr. Nelson in 1908, the task of editing the successful essay has been given to the undersigned in coöperation with the author.

In publishing this volume occasion is taken to state the purpose of the competition. Since it is confined to students and graduates of a

college which offers no post-graduate instruction, it is not intended to require original historical research but rather to encourage a thoughtful handling of problems in political science.

THEODORE CLARKE SMITH,  
J. Leland Miller Professor of  
American History

WILLIAMS COLLEGE,  
WILLIAMSTOWN, MASS., December, 1910.

## INTRODUCTION

IN a chapter of Hall's Chronicle having to do with the mid-reign history of Henry VIII occurs an instance of popular protest against arbitrary taxation. The people are complaining against the Commissions, says the Chronicler, bodies appointed by the Crown to levy taxes without consent of Parliament. "For thei saied," so goes the passage, "if men should geue their goodes by a Commission, then wer it worse than the taxes of Fraunce, and so England should be bond and not free." Hall's naive statement is scarcely less than a declaration of the axiomatic principle of politics that self-taxation is an essential of self-government.

Writers on the evolution of the taxing power are inclined to go a step farther and believe that the liberty of a nation can be gauged most readily by the power of the people over the public purse. With a view so extended a narrative of the growth of popular control in

England might easily expand into a history of the English Constitution. In the present essay, however, an effort has been made to exclude all matters which were not of the strictest pertinency to the subject in hand. Feudal dues and incidents, the machinery of taxation, the Exchequer, the forces accounting for the shifting composition of the national assemblies, these and other matters have been treated of in outline rather than in detail, because they appeared to lie beyond the scope of this essay.

Only two matters have been taken to be of first rate importance,—the tax and the authority by which it was laid. Taxation has been construed broadly as being any contribution levied by the government for its own support. An endeavor has been made in each instance to find out who or what the taxing authority was, and whether the tax was laid in accordance with it. Under the Normans the taxing authority was unmistakably the king, and by the Bill of Rights it lay as unmistakably in Parliament, with the right of initiation in the House of Commons. The story of the shift from one position to the other

forms, of course, the major burden of the essay.

At the time when the subject was assigned, the power of the House of Commons over money bills had not been brought into question for more than two centuries, and the first drafts had been written and the prize awarded before the Asquith ministry was confronted with the problem of interference by the House of Lords. At this writing the question has not been settled. It has seemed advisable therefore to leave the essay within the bounds originally set for it, and what connection it has with the events of 1909 and 1910 consists chiefly in its consideration of the basic principles involved in that struggle.

To the late Henry Loomis Nelson, David A. Wells Professor of Political Science in Williams College, I owe the interest I have had in the preparation of this book. It is an outgrowth of his course in English Constitutional history, and some of the interpretations placed upon events are his interpretations. His death intervened before the second draft of the book was made, and the revisory work had to be done without his suggestions. To

my friend, Dr. Theodore Clarke Smith, Professor in Williams College, I am indebted for a painstaking examination of the manuscript and for much valuable advice in the work preliminary to publication. Acknowledgments in the footnotes to Bishop Stubbs, Mr. Medley, Mr. Taswell-Langmead and many others scarcely manifest my obligations. But the essay throughout is based upon original authorities.

SHEPARD ASHMAN MORGAN.

NEW YORK, December, 1910.

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## PARLIAMENTARY TAXATION

### I

#### THE SAXONS: CUSTOMARY REVENUES AND EXTRAORDINARY CONTRIBUTIONS

THE English Constitution looks ever backward. Precedent lies behind precedent, law behind law, until fact shades off into legend and that into a common beginning, the Germanic character. Standing upon the eminence of 1689, one sees the Petition of Right, and then in deepening perspective, Confirmation Cartarum and Magna Carta. The crisis of 1215 points to the Charter of Henry I, and behind that are the good laws of Edward the Confessor. The Anglo-Saxon polity looks back of the era of Alfred, to the times when Hengist and Horsa were yet unborn, and the German tribesmen were still living in their forests beyond the Rhine without thinking of migrating westward. And there, behind the habits of those barbaric ancestors of

Evolution-  
ary char-  
acter of the  
English  
Constitu-  
tion

Englishmen, lies the national character, the Anglo-Saxon sense of right and wrong, of loyalty, justice, and duty. The growth of the English Constitution has been as subject to the laws of evolution as the development of man himself. The germ of national character evolved habits of thought and action, and these habits, or as they are better termed, institutions, were beaten upon by conditions and fused with the institutions of another people, until at last they took on the shape of free government.

Early ideas  
of taxation

Amongst  
the  
Germans

An account of the advance toward the laying of taxes by representatives of the people must begin with some notice of the idea of taxation which actuated the German tribesmen. Tacitus writing of them as they were at the beginning of the Second Century A. D. makes this remark: "It is customary amongst the states to bestow on the chiefs by voluntary and individual contribution a present of cattle or of fruits, which, while accepted as a compliment, supplies their wants."<sup>1</sup> Here,

<sup>1</sup> Tacitus, *Germania*, cap. xv. "Mos est civitatibus ultro ac viritim conferre principibus vel armentorum vel frugum, quod pro honore acceptum etiam necessitatibus subvenit."

then, is the earliest idea of a tax, a voluntary contribution for the support of the *princeps*. It was prompted by the essentially personal relationship existent between people and chieftain, the sense of attachment of the people to the leader. Direct taxation laid by the *princeps* upon the tribe, was as unknown in Germany as it was foreign to the Germanic spirit.

When the conquering Saxons, therefore, swept westward across the German Ocean, they carried with them scarcely more than a semblance of taxation. Between men and leader the personal relationship still subsisted, but as time went on, the Anglo-Saxon king became less the father of the people, and more their lord. Lord of the national land he was as well, but he did not rule by reason of that fact. The two claims upon popular support were therefore distinct, the one as personal leader, the other as lord of the national land; and during the major part of the Anglo-Saxon era they afforded a sufficient means for the maintenance of the king and his government. Until the moment of a supreme emergency the king did not have to seek extraordinary sources of income.

Amongst  
the Anglo-  
Saxons

Revenue of  
the Anglo-  
Saxon  
kings

As lord of the national land, the king had a double source of revenue. The folkland, or land subject to national regulation<sup>1</sup> and alienable only by the consent of the Witenagemot, presented the king with its proceeds, much of which went for the maintenance of the royal armed retainers and servants. Deducible from this right to the public lands, was the claim of the king to tolls, duties, and customs accruing from the harbors, landing-places, and military roads of the realm, and to treasure-trove. Aside from this, the king was one of the largest private landowners in the kingdom, and from it he derived rents and profits which were disposable at will.

The other sources of the royal revenue, which at least in the beginning may be said to have accrued to the king by reason of personal obligation, were the military, the judicial, and the police powers. By reason of the military power vested in him, the king could demand the services of all freemen to fulfill the *trinoda necessitas*,—service in the militia, repair of bridges, and the maintenance of fortifications. Further, in accord-

<sup>1</sup> Vinogradoff, *Growth of the Manor*, 142, 143.

ance with the system of vassalage incident to his military power, he had the right of *heriot*,<sup>1</sup> according to which the armor of a deceased vassal became the property of the king. The judicial authority, also, was a fruitful source of income; from it the king adduced a right to property forfeited in consequence of treason, theft, or similar crimes, and to the fines which were payable upon every breach of the law. The third great power vested in the royal person was the police control; under it the king turned to account the privilege of market by reserving to himself certain payments; also the protection offered to Jews and merchants was paid for, and the king pocketed the bulk of the tribute. Beyond these,—and here we have the analogy of the later royal claim to purveyance,—the districts through which

<sup>1</sup> The *heriot*, unlike the feudal incident known to the Normans as a *relief*, was a repayment to the king upon the death of a vassal, of the various accoutrements with which he had been endowed. The statute of Cnut II, § 72, fixes the heriot of an earl at eight horses, four suits of armor, and two hundred mancuses of gold. The heriot varied in amount according to the rank of the deceased vassal. The statute is given in Stubbs, *Select Charters*, 74.

the king passed or those traversed by messengers upon the king's business, lay under obligation to supply sustenance throughout the extent of the royal sojourn.

Danegeld,  
991

It is apparent that an extraordinary occasion had to arise before this large ordinary revenue should prove to be inadequate to meet all reasonable royal necessities. The whole matter is shrouded in obscurity, yet it is unlikely that this extraordinary occasion arrived before the onslaught of the Danes. There is no record of an earlier instance.

It was in 991<sup>1</sup> that the Saxon army under Brihtnoth, Ealdorman of the East Saxons, suffered decisive defeat at the hands of Danish pirates. King Ethelred the Unready found himself at the mercy of foreign enemies, and his only recourse was bribery. Under this necessity, a levy<sup>2</sup> of £10,000 was made,

<sup>1</sup> Florentii Wigorniensis, *Chronicon ex Chronicis*, a. 991, p. 149.

<sup>2</sup> "This tax was levied by reference to the hides into which in the various hundreds of the shire, land was divided for the purposes of taxation." The hide was the equivalent of 100 or 120 acres. The rate was one to four shillings, as occasion required. <sup>1</sup> Dowell, *History of Taxation and Taxes in England*, 8.

and secured momentary peace from the truculent Danes. But it was only momentary; they returned in 994 and took away £16,000. They repeated, under various pretexts, their profitable incursions in 1002, 1007, and 1011.<sup>1</sup> In 1012, having been bought off for the last time, the Danes entered English pay, and the Danegeld instead of being an extraordinary charge, became a regularly recurrent tax. It continued until 1051, when Edward the Confessor succeeded in paying off the last of the Danish ships.<sup>2</sup> The chronicler<sup>3</sup> accounts for the abolition of the Danegeld after the manner of his time. Edward the Confessor, so goes the story, entered his treasure-house one day to find the Devil sitting amongst the money bags. It so happened that the wealth which was being thus guarded was that which had accrued from a recent levy of the Danegeld. To the pious Confessor the sight was sufficient to demonstrate the evil of the tax and he straightway abolished it.

<sup>1</sup> Amount in 1002, £24,000. — Flor. Wig. a. 1002, p. 155. Amount in 1007, £36,000. — Flor. Wig. a. 1007, p. 159. Amount in 1011 not stated.

<sup>2</sup> <sup>1</sup> Dowell, *History of Taxation and Taxes in England*, 10.

<sup>3</sup> <sup>1</sup> Roger of Hoveden, 110.

Authority  
for the  
Danegeld

But the history of the origin of the Danegeld and the mythical tale of its abolition are of trifling importance as compared with the authority whereby the impost was laid. In 991 it was apparently the Witenagemot, acting upon the advice of the Archbishop Sigeric, which issued the decree levying the tax.<sup>1</sup> Three years later it was "King Ethelred by the advice of his chief men" who promised the Danes tribute.<sup>2</sup> Similarly in 1002, 1007, and 1011 it is Ethelred "cum consilio primatum" who fixes the amount of money to be raised.<sup>3</sup>

The deduction is not hard to make: it was at least usual if indeed it was not felt to be a necessity for the king to take counsel with the Witenagemot before he went about the preliminaries of taxation. It is not unlikely, however,

<sup>1</sup> Decretum est primum iam ut solveretur tributum Danicis viris, propter magnos horrores quos incusserunt incolis maritimis; in primis nempe, X milia librarum. Illud consilium constituit Sigericus Archiepiscopus. *Chron. Sax.* a. 991.

<sup>2</sup> Tunc rex Aegelredus, procerum suorum consilio, ad eos legatos misit, promittens tributum et stipendium ea conventionione illis se daturum, ut a sua crudelitate omnino desisterunt. *Flor. Wig.* 151, 152; a. 994.

<sup>3</sup> *Flor. Wig.* 155, 159, 163; a. 1002, 1007, 1011.

that in practice the assent of the Witan was less or more of a formality varying according to the weakness or strength of the king. A strong king's will would dominate the Witan, whereas a weak king would be subservient to its desires and interest.

In order to arrive at a clear comprehension of the taxing power of the Witan as compared with that subsequently exercised by the English Parliament, it is essential that one understands the make-up of the Anglo-Saxon body. As its name implies, the Witan was an assembly of the wise. Its organization was not based upon the ownership of land, nor was there any rule held to undeviatingly which prescribed qualifications for membership. Generally speaking it was composed of the king and his family, who were known as the Athelings; the national officers, both ecclesiastical and civil, a group which included the bishops and abbots, the ealdormen or chief men of the shires, and the ministri or administrative officers; and finally, the royal nominees, men who are not comprehensible in the above classes, but who recommended themselves to the king by reason of unusual or expert

The Witenagemot  
and its  
powers



knowledge.<sup>1</sup> It is observable, then, that this assembly was by the nature of its composition aristocratic. That it was not representative in the modern sense of the term is as readily apparent. With certain restrictions the official members — the bishops, ealdormen, the ministri — were coöpted by the existing members, while the remainder were either present by right of birth or invited to attend by reason of peculiar attainment. Nevertheless, the Witenagemot was commonly believed to be capable of expressing the national will. It had the power of electing the king and the complementary power of deposition, and exercised every power of government, making laws, administering them, adjudging cases arising under them, and levying taxes for the public need.<sup>2</sup>

Such in brief was the body which in 991 assented to the levy of the Danegeld. The act was of great importance; by it the Witan both exercised a right which was not to be vindicated in its completeness for the space of seven hundred years, but it laid a trap for

<sup>1</sup> Medley, *English Constitutional History*, 117, 118.

<sup>2</sup> 2 Kemble, *Saxons in England*, 204-240.

those who, in the time of Charles the First, should be struggling for the attainment of that right, for in their action lay the precedent which the Stuart lawyers should warp into a pretext for the levy of ship-money.

## II

### FEUDAL AND ROYAL TAXATION THE NORMAN AND THE ANGEVIN KINGS 1066-1215

Character  
of the  
Norman  
Rule

UNDER the Saxon kings the structure of government was only half built. The foundation, laid in the shire and hundred moots, the townships, and the incidental organisms of local government, was solid and capable of upholding a heavy superstructure. But the Saxons scarcely built further. They left to the Norman kings, peculiarly fitted to their work by temperament and habit, the task of setting up a strong central government. The price which the nation paid for it was the loss of what right it had possessed of assenting to taxation.

During the whole period from the coming of the Normans in 1066 to the signing of Magna Carta in 1215 there can be brought forward only two or three instances of assent by the National Council to taxes levied by the

king, and these few instances are at best equivocal. They are insufficient to justify the belief that the National Council had any final power over the levying of taxation. But the period is not altogether gray; it concludes with the enunciation in Magna Carta of rights which cast a halo of color over the whole subsequent narrative of the struggle for parliamentary taxation.

William the Conqueror was precisely the man most likely to exercise supreme control over taxation. Elected to the kingship according to the Saxon forms and with his title to the crown backed up by force of arms, he created a system of government of which he himself was the center and in which his authority, even to the vassals of vassals, was supreme.<sup>1</sup> With his thirst for power thus satisfied he was given a free hand to indulge his besetting sin of avarice. Small wonder was it therefore that he clung to the revenues of his predecessors and added new imposts of his own.

William  
the  
Conqueror  
1066-1087

<sup>1</sup> At the great Gemôt of Salisbury, 1086, William put an end to the disrupting effects of subinfeudation by causing all holders of land, whether their tenure was mediate or immediate of him to swear primary allegiance to the king.



His  
National  
Council

Nevertheless, notwithstanding the absolutist character of the king, William retained the theory and for the most part the form of the Saxon Witan. Never, however, did the Norman assemblies exercise independent legislative or executive functions.<sup>1</sup> The holding of land, as a prerequisite to membership in the National Council, was under William an uncertain factor; the membership continued to include, generally speaking, the same officers, ecclesiastics, and nobles as composed the Witenagemot. The powers of this assembly were probably not great; at any rate, the magnates of the period considered attendance not as a right or a privilege or even as an advantage, but merely as a necessary duty toward the royal person. The king consulted the magnates on almost every piece of legislation, and stated in the subsequent promulgation of the laws that he had obtained their advice. But in the case of a strong king, such as was the Conqueror, the consultation must have been scarcely more than a statement of the royal will and a formal acquiescence. The holding of these assemblies

<sup>1</sup> Stubbs, *Const. Hist. Eng.* 385, note.

took place at the crowning days of the king, at Christmas, Easter, and Whitsuntide, generally in London, Winchester, and Gloucester.

In the matter of taxation, it is probable as <sup>its part in taxation</sup> in the case of other legislation that the Conqueror advised with his Council, though the evidence pointing toward such a conclusion is entirely of a later date. But in so far as practical advantage to the payers of the taxes was concerned, the power might quite as well have lain solely in the hands of the king; if indeed the Conqueror did secure the assent of the Council, it was no more than an instance of his policy of adhering to the forms of law while making the practices under it serve his own purposes. The reimposition in 1084 of the Danegeld which William revived as an occasional instead of a regular tax, is not stated by the chronicler as receiving assent from the Council; the king is said to have "received six shillings from every hide."<sup>1</sup> Roger of Wendover's Chronicle of the same

<sup>1</sup> 2 Flor. Wig. 17, a. 1084; and 1 Rogeri de Hoveden, 139. "Rex Anglorum Willelmus de unaquaque hida per Angliam sex solidos accepit." This rate of six shillings the hide was three times as great as the amount under the Saxons.

Instance of  
the  
Danegeld,  
1084

year brands this exaction as an "extortion,"<sup>1</sup> by which we are scarcely to understand a tax granted in any modern sense by the chief legislative body of the kingdom. The Saxon Chronicler speaking of the same imposition says, "The king caused a great and heavy tax to be raised throughout England, even seventy-two pence on every hide of land."<sup>2</sup> The amount of such an impost, if drawn from two-thirds of the hidage of the kingdom, would be a sum approximating £20,000.<sup>3</sup> It is unlikely that an exaction of so great magnitude could have been levied without the assent of the Council if the Conqueror was under any obligation to obtain their consent or even their advice; and it is still more unlikely that four chroniclers of the events of that year should have let pass unnoted a vote of assent if it had been passed by the National Council. We are therefore to conclude that either the Conqueror levied the tax without consulting his Council at all, or that he did consult them,

<sup>1</sup> 2 Roger of Wendover, 23, a. 1084. "Having extorted large sums of money from all ranks where he could find any cause just or unjust, he crossed the sea into Normandy."

<sup>2</sup> *Chron. Sax.* a. 1083.

<sup>3</sup> 1 Stubbs, *Const. Hist. Eng.* 303.

and that their assent was of so formal and valueless a nature as not to deserve notice in the records of the year.<sup>1</sup>

The year 1086 witnessed the Domesday Survey. By it William obtained a detailed register of the land and its capacity for taxation. To the administrative side of taxation the Survey is of supreme importance, since the valuation of land thus arrived at was never entirely superseded as a definite and fair basis for the laying of taxes; to the actual granting of the tax, however, its importance is of much less degree. In such light the interest centers chiefly on the fact that representatives were elected from every hundred upon whose sworn depositions the information that William wanted was obtained.

The unlucky thirteen years of the reign of William Rufus, who succeeded to the throne upon the death of the Conqueror in 1087, are almost negligible in considering the progress toward parliamentary taxation. William

<sup>1</sup> Aside from the reimposed Danegeld, William derived an annual income of £20,000 from the royal lands, and an amount difficult of estimation from the feudal dues and incidents.

Domesday  
Survey,  
1086

William  
Rufus,  
1087-1100

Rufus, or more particularly his brilliant and perverted justiciar, Ranulf Flambard, determined upon the profitable program of getting together as much money as possible by whatever means seemed most convenient. In the nature of things the church and the great feudatories were the most available sources for extortion and toward them Flambard chiefly directed his energies. He did not, however, overlook the Danegeld and he seems to have levied it with perfect absolutism. The chronicler Florence gives an instance of the petty extortion which the justiciar practiced upon the people. Flambard was in the habit of enforcing military service from the shires. On one occasion, so says Florence, he met the array, informed the militiamen that there was no necessity for their appearance, and then proceeded to mulct them of the ten shillings which their shires had given to each by way of providing for their maintenance.<sup>1</sup> Against plunderings of that sort the people were too weak and too disunited to make resistance. In such a reign, with one side unwilling to progress and the other unable, it is apparent

<sup>1</sup> 2 Flor. Wig. 35, a. 1094.

that no steps could be taken toward the granting of taxes by a responsible body.

The reign of Henry I is of greater importance, not only because of the long forward strides which the king and his justiciar Roger of Salisbury took in the direction of judicial and financial organization, but because we find in the records of his time certain pieces of evidence which seem to support the contention that the Council gave some measure of consent to taxation. The former is palpably beyond the scope of this essay, but the latter is more pertinent.

The first of these instances is the eleventh section of the Charter of Liberties which Henry I issued at the moment of his accession. The significant passage is this: "To those knights who hold their lands by the cuirass, of my own gift I grant the lands of their demesne ploughs free from all payments and all labor."<sup>1</sup> The king goes on to state

<sup>1</sup> § 11. Militibus qui per loricas terras suas defendunt, terras dominicarum carrucarum suarum quietas ab omnibus gildis, et omni opere, proprio dono meo concedo, ut sicut tam magno allevamine alleviati sint, ita se equis et armis bene instruant ad servitium meum et ad defensionem regni mei. Stubbs, *Select Charters*, 101. The translation of the Charter

Henry I,  
1100-1135

His  
Charter

the reason; it was "so they may readily provide themselves with horses and arms for my service and for the defense of my kingdom." The relief thus granted was by way of protection against the extortionate demands which Ranulf Flambard had laid upon the lands of vassals in the time of William Rufus. But Henry did not grant the liberty freely out of hand. He appended the clause that for his service and the defense of the kingdom, the vassals should supply themselves with horses and arms. Thus remotely and in effect rather than in fact did the Charter touch upon taxation. It contained no reference to assent by the vassals, either individually or in the National Council. In accordance with the feudal theory of individual contribution for the support of the lord, and in view of the provision in the Charter against payments, the inference can be drawn that individual assent would be in order. But to find an answer to the question as to where the collective assent of the barons was obtained, if at all, one must look further.

is in Adams and Stephens, *Select Documents of English Constitutional History*, 4-6.

In a letter addressed to "Samson the Bishop and Urso d'Abitat," who were respectively the bishop of the diocese and the sheriff of the county of Worcester, Henry says, in speaking of the county courts, "I will cause those courts to be summoned when I will for my own proper necessities at my pleasure."<sup>1</sup> That these county courts were utilized by the Norman kings for purposes of extortion, is attested by the reluctance of the suitors to attend their sessions,<sup>2</sup> and in the light of that fact, the "proper necessities" of the king are apparently none other than the royal need for money. But why, if the assent of the taxed was not required, should the courts be summoned to meet the "proper necessities" of the crown? Would that purpose be subserved merely by making a demand for money? Had that been the fact, the courts might well have been left to carry on their peculiar functions untroubled, for extortion can be the more readily practiced king to man than

Question of  
assent to  
taxation

In the  
Shire  
Moots

<sup>1</sup> Ego enim, quando voluero, faciam ea satis summonere propter mea dominica necessaria ad voluntatem meam. Stubbs, *Select Charters*, 104.

<sup>2</sup> Cf. 1 Stubbs, *Const. Hist. Eng.* 429.



king to people. The conclusion is reasonable, notwithstanding the very large part which conjecture plays in it, that some form of assent was usual in the county courts in response to the royal demands.

But there is another piece of evidence which points to the National Council itself giving assent to taxation. In the Chronicle of the Monastery of Abingdon occurs a quotation of an order from Henry to his officers exempting the lands of a certain abbot from the payment of an "aid which my barons have given me."<sup>1</sup> Whether or not this statement can be taken as substantiating the theory of assent depends upon a point of time; was the gift of the barons before or after the laying of the tax? If the gift was indeed prior to the levy, then the evidence is conclusive that the barons assented to taxation; if, on the other hand, the barons gave the aid after the levy

In the  
National  
Council

<sup>1</sup> *Chronicon Monasterii de Abingdon*, 113, quoted by 1 Stubbs, *Const. Hist. Eng.* 429, note 3, as follows: "H. rex Anglorum R. episcopo, et Herberto camerario et Hugoni de Bochelandia, salutem. Sciatis quod clamo quietas V hidas abbatis Faricii de Abendona de eleemosyna de Wrtha, de omnibus rebus, et nominatim de isto auxilio quod barones mihi dederunt."

had been made, the statement refers solely to the actual payment of the tax. The tense of the Latin verb, however, and the circumstances in which the king writes, seem to point to the former alternative; Henry directs that the Exchequer exempt the abbot's lands from the collection of an aid, not which the barons were giving him, but which they have given him. It is possible to infer, then, that sometimes, at least, the barons formally assented to the levying of an extraordinary aid.

But this assent must not be taken as proof that the barons discussed taxation in formal session or that they had any generally recognized power of choice. None of the records of the time, though they speak emphatically of the oppressiveness of the taxes,<sup>1</sup> suggest

<sup>1</sup> *The Saxon Chronicle* upon Henry's taxes:

A. 1103. This was a year of much distress from the manifold taxes.

A. 1104. It is not easy to describe the misery of this land, which it suffered at this time through the various and manifold oppressions and taxes that never ceased or slackened.

A. 1105. This was a year of great distress from the failure of the fruits, and from the manifold taxes which never ceased.

A. 1110. This was a year of much distress from the taxes which the king raised for his daughter's dowry.

that at any time the barons refused to give the king what he asked for. The probability is that Henry I sought baronial assent merely as a matter of form, and that he did it out of respect, more or less conscious, for the theory that contributions of a feudatory toward the support of the crown should be of a nature voluntary. The perfunctory character of the assent, together with the absence of evidence looking to a refusal, points to nothing so much as the firmness of the royal grip upon the purses of the nation.

Stephen,  
1135-1154

During the major part of King Stephen's nineteen turbulent years, feudalism and anarchy ran hand in hand. Such progress as had been making toward parliamentary taxation ceased. Stephen showed himself an adept at misgovernment and succeeded in nothing so well as in his own discomfiture.

Things went by contraries. Stephen allowed the nobles to make themselves impreg-

A. 1118. England paid dearly for all this (i. e., the Norman war) by the manifold taxes which ceased not all this year.

A. 1124. Full heavy a year was this; he who had any property was bereaved of it by heavy taxes and assessments, and he who had none, starved with hunger.

From the edition of J. A. Giles.

nable in the royal castles and then sought to dislodge them by raising up a new and hostile baronage. The nobles, needing money to carry on war amongst themselves and against the king, extorted it from the people. "Those whom they suspected to have any goods they took by night and by day, seizing both men and women," says the Saxon Chronicle,<sup>1</sup> "and they put them in prison for their gold and silver, and tortured them with pains unspeakable, for never were martyrs tormented as these were." And then, "They were continually levying an exaction from the towns, which they called Tenserie (a payment to the superior lord for protection), and when the miserable inhabitants had no more to give, then plundered they and burnt all the towns, so that well mightest thou walk a whole day's journey nor ever shouldest thou find a man seated in a town, or its lands tilled."

Henry of Huntingdon adds a detail which fills out the picture of wretchedness. Speaking of Stephen's promise to abolish the Danegeld in 1135, shortly after his accession, the chronicler says, "The king promised that the Danegeld,

<sup>1</sup> *Chron. Sax.* a. 1137.

that is two shillings for a hide of land, which his predecessors had received yearly, should be given up forever. These . . . he promised in the presence of God; but he kept none of them."<sup>1</sup>

Henry II,  
1154-1189

By the treaty of Wallingford in 1153, Stephen agreed that the crown should descend at his death to Henry of Anjou,<sup>2</sup> the son of the Empress Matilda, and great-grandson of the Conqueror. The treaty provided, also, for comprehensive reforms which Stephen, a melancholy figure in contrast with the vigorous Henry, tried to work out. Stephen died at the end of a year's attempt to put in operation the new programme and Henry came to the throne. Henry's reign was marked by a regular and peaceful administration of the government which had its rise in the genius of the king for organization. It witnessed too the struggle with Thomas à Becket, a

<sup>1</sup> Henry of Huntingdon's *Chronicle*, a. 1135. Trans. by Thomas Forester, 264.

<sup>2</sup> Henry II was the first king since Edward the Confessor in whose veins ran the blood of the Saxon monarchs, being the grandson of Matilda, wife of Henry I. Matilda was great-granddaughter of Edmund Ironside, the son of Ethelred the Unready.

conflict which has been pointed to as "the first instance of any opposition to the king's will in the matter of taxation which is recorded in our national history."<sup>1</sup>

The story of it is full of dramatic interest. At the Council of Woodstock in 1163, "the question was moved," so goes the Latin narrative, "concerning a certain custom." This custom, which amounted to two shillings from each hide, had previously fallen to the sheriffs, but this "the king," so continues the Latin account, "wished to enroll in the treasury and add to his own revenues."<sup>2</sup>

Controversy with  
Becket  
over the  
Sheriff's  
Aid

In response to this, Becket is recorded as saying, "Not as revenue, my lord king, saving your pleasure, will we give it: but if the sheriffs and servants and ministers of the shires will serve us worthily and defend our dependents, we will not fail in giving them their aid."<sup>3</sup>

<sup>1</sup> Stubbs, *Const. Hist. Eng.* 500.

<sup>2</sup> Grim, *V. S. Thomæ*, 21, 22, in Stubbs, *Sel. Chart.* 129.

<sup>3</sup> Bishop Stubbs (1 *Const. Hist. Eng.* 500) believes this struggle between Henry II and Becket to have been the death-blow to the levy of the Danegeld, which is not noted in the Pipe Rolls after 1163. J. H. Round [*Feudal England*, 497-502, in the paper "The Alleged Dispute on Danegeld (1163)"], effectually establishes his contention that the tax in question was not the Danegeld, but the "auxilium vicecomitis" or



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This was from the chancellor turned archbishop. In his former estate Becket had not shrunk from pressing money composition for military service from prelates holding land of the crown on the ground that they were tenants-in-chief and therefore owed service of arms to the king. But now he had changed his masters and stood champion of the church.

To him Henry returned, "By the eyes of God, it shall be given as revenue, and it shall be entered in the king's accounts; and you have no right to contradict; no man wishes to oppress your men against your will."

"My lord king," Becket declared, "by the reverence of the eyes by which you have sworn, it shall not be given from my land and from the rights of the church not a penny."

Apparently for the moment the archbishop won his point, but from that time on, Becket and the king stood apart. The continuation of the struggle between them at Westminster the following October; the Constitutions of Clarendon, sweeping away much of the exclusive authority which previously had charac-

"Sheriff's aid," which was a customary, variable charge paid over locally to the sheriffs in payment for their services.

terized ecclesiastical jurisdiction; the flight of Becket into France; the coronation of the young Henry by the Archbishop of York to the prejudice of Becket, and the latter's declaration of illegality; these and the martyrdom of the archbishop, are parts of another story.

Exactly what were the motives of Becket in making his stand against the king at the Council of Woodstock, are somewhat difficult of determination. The interest of the king was obvious; he wished to increase his revenue by annexing the "auxilium vicecomitis" or "Sheriff's aid," which had not gone into the royal treasury at all but had served to swell the private income of the sheriffs. Whether Becket, "standing on the sure ground of existing custom,"<sup>1</sup> objects to change merely because it was a change; or whether he had in mind some lofty democratic principle, and took his stand against the royal power in favor of the lesser folk through some flush of democratic fervor, is not only impossible of being decided, but the decision would not be of strict relevance to the subject. The two

The issue in the Woodstock Controversy, 1163

<sup>1</sup> Round, *Feudal England*, 501.

points to observe, and they are perfectly evident, are that Becket's stand against the king did not concern a new levy of taxes, but an imposition already customary; and that the king asserted Becket's incompetency to interfere. Becket had presumed to take a hand in a matter connected with taxation; the king had denied him that right, though the archbishop was the chief member of his National Council. Therein lay a great issue.

A number of other incidents of the reign of Henry II, though they lack the color of a controversy between archbishop and monarch, are nevertheless worthy of consideration.

**Scutage** The imposition in 1159 of the Great Scutage, despite the fact that it came as a feudal charge rather than as a form of regular taxation, assumes great importance in view of the part that scutage played in the evolution of the taxing power.

Scutage is generally considered as one of the forms of "commutation for personal service," and commutation was undoubtedly the underlying idea of the imposition.<sup>1</sup> The payment was made for every knight owing

<sup>1</sup> Baldwin, *Scutage and Knight Service in England*, 12.

military service. Each knight holding of the king was expected to serve in the field for forty days. Eight pence a day in the reign of Henry II was the usual wages of a knight, and for forty days the wages would amount to two marks, which was the sum most commonly paid in lieu of personal service. It was in its earlier phase distinctly a feudal charge.

Payment of scutage, like most of the other forms of feudal and general taxation, struck its roots far into the past. Bishop Stubbs fixes 1156 as the year in which the term scutage was first employed.<sup>1</sup> Others find counterparts in various payments to the sovereign in the time before and shortly after the Conquest. In the reign of Henry I the practice of allowing ecclesiastics to compound at a fixed rate for the knight-service due from their estates was generally followed. The privilege was sometimes extended to mesne tenants.<sup>2</sup> One writer<sup>3</sup> points to Ranulf Flam-

Early instances of Scutage

<sup>1</sup> Stubbs, *Const. Hist. Eng.* 491.

<sup>2</sup> H. W. C. Davis, *England under the Normans and Angevins*, 205.

<sup>3</sup> Miss Kate Norgate, *Angevin Kings*, 432.

bard's device in 1093, when he took from the men of the fyrd the money which had been given them for the purchase of supplies while on the march. Others<sup>1</sup> suggest the Anglo-Saxon *fyrdwite*, the payment made by the king's men when they were absent from the royal train in war time as the analogy and precedent for scutage. It seems more likely that the king and his vassals adopted a money payment in lieu of service because it was convenient for both of them.<sup>2</sup> The king thereby got the means for the enlistment of a body of mercenaries, subject to his absolute will, and the barons were relieved, if so they pleased, of the burden of military service.

The Great  
Scutage,  
1159

The levy commonly spoken of as the Great Scutage was made in 1159. Henry II was considering an expedition into France against the Count of Toulouse. He had a claim to the latter's lands through the inheritance of his wife, the Duchess of Aquitaine. The English baronage, by the terms of their feudal tenure, were bound to follow their lord into the field. Nevertheless a distaste had arisen

<sup>1</sup> Stubbs, *Const. Hist. Eng.* 494.

<sup>2</sup> Baldwin, *Scutage and Knight Service in England*, 5.

of late among them for service abroad, and it was natural enough, therefore, that they should fall in with the scheme of Henry and his adviser, Thomas a Becket, for a commutation in money. Henry levied a charge of two marks (£1, 6s. 8d.) on the knight's fee of £20, annual value, from such of his vassals as chose not to follow him into France.<sup>1</sup>

The authority by which this payment was demanded was apparently solely that of the king. It is probable that the levy was unquestioned. In view of the facts that this was merely a change, and possibly no very great change, in the method of meeting a regular feudal obligation, and that many of the barons were willing to avail themselves of a means of escaping the burden of foreign service, the want of a recorded protest is not to be wondered at. The chronicler puts it plainly and probably with accuracy when he says that Henry "received" a scutage.<sup>2</sup> It

<sup>1</sup> Stubbs, ed. *Gesta Regis Henrici Secundi Benedicti Abbatis*, preface xcvi-xcvii, cites other instances of scutage in this reign: 1161, for debts incurred in the Welsh war; 1172, for the expedition into Ireland; 1186, for the expedition into Galloway against the Irish prince, Ronald.

<sup>2</sup> Gervas, c. 1381, in Stubbs, *Select Charters*, 129: Hoc



was profitable for the king. The chronicler puts the proceeds at "one hundred and twenty-four pounds of silver."

Theobald's  
complaint,  
1156

Three years previously, however, an ecclesiastical complaint was raised against a similar imposition. In 1156 such prelates as held their lands by military tenure were directed to compound for soldierly service which their character of churchmen precluded them from rendering.<sup>1</sup> Some thirty-five bishops and abbots paid the assessment, but Archbishop Theobald raised vigorous protest.<sup>2</sup> He objected, apparently, not out of principle, but because he could not see that the exaction was necessary.<sup>3</sup> This probability, together with the further considerations that the demand was not a demand for a new tax but merely that the prelates compound for an obligation long recognized as lawful, and that there were precedents for precisely this sort of commuta-

anno (1159) rex Henricus scutagium sive scutagium de Anglia accepit, cujus summa fuit centum millia et quater viginti millia librarum argenti.

<sup>1</sup> *Liber Rubeus de Scaccario*, Hubert Hall, editor, 6, 16-18.

<sup>2</sup> John of Salisbury, ep. 128, noted by 1 Stubbs, *Const. Hist. Eng.* 492, note 1.

<sup>3</sup> Round, *Feudal England*, 274.

tion, makes Theobald's protest not of great importance. He did not question, strictly speaking, the right of the king to levy taxes at all.

The remainder of the reign of Henry II, aside from the fact that it witnessed the temporary passing of the Danegeld,<sup>1</sup> derives its chief importance by reason of the extension of taxation to cover personal property. By the Assize of Arms in 1181, "every free layman who had in chattels or in revenue to the value of sixteen marks" was to "have a coat of mail and a helmet and a shield and a lance;" and "every free layman who had in chattels or revenue ten marks should have a hauberk and a head-piece of iron and a lance."<sup>2</sup> Here was a step toward laying movables and personal property open to taxation. Seven years later, when Saladin had cut his way into Jerusalem, personal property was forced to contribute toward the Crusade. This tax, the so-called "Saladin tithe," was laid at the Coun-

Early step  
toward a  
tax on  
movables

The  
Saladin  
Tithe, 1188

<sup>1</sup> The Danegeld disappears from the Rolls in 1163. It persists, probably, however, as a "donum" or an "auxilium." The "carucage" of Richard I is the Danegeld under another name.

<sup>2</sup> 2 Benedict, 278. Also in Stubbs, *Select Charters*, 153.

cil of Geddington on the 11th February, 1188. Present at it were archbishops and bishops and the greater and lesser barons,<sup>1</sup> but it is not stated whether or not they gave a formal consent to the levy. "This year," so goes the Ordinance, "each one shall give in alms a tenth part of his revenues and movables, except the arms and horses and clothing of the knights; likewise excepting the horses and books and clothing and vestments and articles required in divine service of whatever sort of the clerks, and the precious stones both of clerks and laymen." This is the earliest recorded instance of a general tax upon movables. For the assessment and collection of the Saladin tithe, Henry adopted a scheme favorite with him, which had been utilized in England for national purposes at least since the time of the Domesday Survey. It was ordained that the assessment be done by juries of inquest; thus the taxpayers themselves were instruments in the determination of how much each should pay, even though the determination of how much the gross payment should be was as yet far beyond their power.

Assess-  
ment by  
Juries of  
Inquest

<sup>1</sup> 2 Benedict, 33.

Henry II closed his reign in 1189. His taxation<sup>1</sup> had never been exceptionally heavy, though it had been the occasion for protest and had served as the pretext in 1174 for a little warring with his barons. In the matter of royal authority over taxation, the power of the king to levy taxes was not much diminished. The instances of opposition that have been cited do not prove much more than that now and then complaining voices were raised in the Great Council; nowhere is it shown that the objections had more than passing value, much less that they were conclusive.

The year after the laying of the Saladin tithe, Henry died. Of his four sons, two were dead and two had taken up arms against him. His first son, who he had hoped would succeed him as Henry III, was dead, and so too was Geoffrey, the father of the luckless Arthur; Richard, his second son, was for the moment the ally of Philip of France; and John, whom the king had loved above the others, now as

<sup>1</sup> Beside the instances of taxation noted above, the following are noteworthy: 1168, a regular feudal aid, *pur fille marier* of one mark on the knight's fee; 1173, exchequer officers held courts and exacted at the same time a tallage throughout the country.

afterward seeking his own advantage, had recently taken his place amongst the rebellious barons who had made common cause with the king of France. This blow, coming on top of his unfavorable peace with Philip, struck the old king to the heart, and cleared the throne for Richard.

Richard I,  
1189-1199

Richard was not, in the fullest sense of the word, an English king. His heart was on the Continent; England he regarded as a treasure-house, and he left the administration of it to his justiciars. Along with the exaction of feudal incidents and other and more special forms of taxation, Richard worked the machinery of the laws to its maximum capacity for what money it would bring him. He sold bishoprics and ministries, and released malefactors from prison for a consideration; sometimes, as in the case of Ranulf Glanville, his father's treasurer, he threw men into prison on shadowy charges and forced them to buy their release. But all was under the guise of legality; Richard, unlike John, and much like Henry VIII, knew how to gain his end and yet adhere to the letter of the law.

On his way back from the Crusade near the close of the year 1192, Richard fell into the hands of his enemy, Leopold, Duke of Austria. Leopold turned him over to his feudal superior, the Emperor Henry VI, and he held Richard for a ransom of £100,000. The levy of the king's ransom was one of the three regular feudal aids<sup>1</sup> for which the subjects were responsible. The magnitude of Richard's ransom, however, brings it out of strictly feudal history into the domain of taxation. In the letter which Richard wrote from his German prison to his mother, the Queen Eleanor, and to his justiciars, he said, "For becoming reasons it is that we are prolonging our stay with the Emperor, until his business and our own shall be brought to an end, and until we shall have paid him seventy thousand marks of silver." The amount of the ransom was subsequently raised to one hundred thousand marks, with an additional fifty thousand exacted as the price of not assisting the Emperor in his war to regain Apulia. Thus

Richard's  
ransom

<sup>1</sup> The three auxilia are: For the ransom of the king, for the marriage of the king's eldest daughter, and for the knight-  
ing of his eldest son.

England became liable for the payment of a sum aggregating £100,000.

It involves  
heavy and  
novel  
taxation

The effort to raise so great a sum revived all the forms of taxation known to England in earlier years, and laid the basis for certain methods of acquiring money previously unknown. The justiciars took "from every knight's fee twenty shillings,<sup>1</sup> and the fourth part of all the incomes of the laity, and all the chalices of the churches, besides the other treasures of the church. Some of the bishops, also, took from the clergy the fourth part of their revenues, while others took a tenth for the ransom of the king."<sup>2</sup> In addition to the property there stated as having been levied upon, the lands of tenants in socage yielded two shillings on the hide or carucate,<sup>3</sup> personal property to the amount of a fourth of its value, and the wool of the Cistercians and

<sup>1</sup> Other scutages in this reign were: 1189, 10s. on the knight's fee for a pretended expedition into Wales; 1195, 20s. on the knight's fee from those who did not follow the king to Normandy; 1196, 20s. for the same reason. 1 Dowell, *Taxation and Taxes*, 41.

<sup>2</sup> 3 Rogeri de Hoveden, *Chronica*, W. Stubbs, ed. 209-225.

<sup>3</sup> This carucage appears in the Rolls under the year 1194. It was demanded at the Council of Nottingham.

Gilbertines. Thus every person in the kingdom, was laid under contribution. Later kings found all of these means of raising revenue exceedingly fruitful, and some of them served as precedents for taxes which played great parts in the struggle for the control of the public purse.<sup>1</sup>

The authority by which the impositions were laid was apparently solely that of the king. Speaking of the letter which Richard addressed to his mother and the justiciars, urging upon them the necessity for raising money for the ransom, the Chronicler says, "Upon the authority of this letter the king's mother and the justiciars of England determined that all the clergy as well as the laity ought to give . . . for the ransom of our lord the king." He speaks of the exactions having been *taken*. The fact that there is no definite record of deliberation or even of assent by the National Council to the enormous demand which the ransom of the king laid upon England, and that no serious objection was raised to the collection, ordered upon the authority of queen and justices, is a comment

The king  
is the  
authority  
for the  
taxes

<sup>1</sup> Rogeri de Hoveden, preface to vol. IV, lxxxii-lxxxvii.



both upon the weariness of the nation and its respect for the ancient feudal aid.

Richard's  
release and  
subsequent  
levies

When Richard was finally released from durance in Austria, he returned to England. Remembering the success which met his first visit to the island at the time of his coronation, he proceeded to set his machinery going despite the financial decrepitude of the nation. The account of his Great Council at Nottingham, called near the last of March, 1194, illustrates not only his ingenious methods of making extra-customary feudal exactions but also the manner in which he levied his non-feudal impositions. The Council, which was not very fully attended, was composed of the archbishops, bishops, and earls. On the first day, he removed from office all the sheriffs of Lincolnshire and Yorkshire, and proceeded to sell their places to Archbishop Geoffrey of York, who paid 3000 marks<sup>1</sup> on the spot with a promise of 100 marks by way of annual increment. Having thus spent his first day, on the second he contented himself with issuing orders against his contumacious brother John. But on the third day he de-

<sup>1</sup> The mark was the equivalent of two-thirds of a pound.

manded the third part of the service of the knights, the wool of the Cistercians for which he was willing to accept a composition, and a carucage of two shillings.<sup>1</sup> This last, which was the lineal descendant of the Danegeld, a land tax on the carucate, he apparently did not exact upon any other authority than his own. The king "determined that there should be granted to him out of every carucate of land through out the whole of England, the sum of two shillings."<sup>2</sup> His action carries out the theory that the voice of the king in his Council was supreme in matters of taxation, and that the promulgation of a tax levy was rather accepted in the character of an edict than as inviting discussion. The deduction, however, that the individuals composing that Council were barred from objecting to a tax or even refusing to pay it, is not well founded; the time had not yet come when the individual felt himself bound by the tacit acquiescence

<sup>1</sup> Carucage, a land-tax based upon the *carucate*, "the quantity of land that could be ploughed by one plough, *caruca*, full team of eight oxen in a season." <sup>1</sup> Dowell, *Taxation and Taxes*, p. 35. Roger of Hoveden sets down the equivalent of the carucate as being 100 acres,—iv. 47.

<sup>2</sup> <sup>3</sup> Rogeri de Hovoden, 242.

of the Council. If he were strong enough to withstand the royal displeasure, he could refuse payment.

Richard levied a second carucage in 1198, "from each carucate or hide of land throughout all England five shillings." Here, too, he acted upon his own authority, and the Chronicler does not refer to the summons of a Council, or the participation of the magnates in the laying of the tax. The assessment of it followed the plan pursued by Henry II, in that the liability of the taxpayer was determined by means of a jury of inquest. Against the payment of the imposition the men of the religious orders demurred, whereupon an edict of outlawry came immediately from Richard. Esteeming the payment of the tax the lighter burden, the friars yielded.

Hugh of  
Lincoln  
refuses  
assent in  
National  
Council,  
1198

The same year, 1198, furnishes us with what is by far the most noteworthy and interesting incident of the reign of King Richard, an event which is taken to be "a landmark of constitutional history."<sup>1</sup> Through his efficient justiciar, Archbishop Hubert Walter, the king laid before his Council at Oxford a

<sup>1</sup> 1 Stubbs, *Const. Hist. Eng.* 548.

plan whereby he "required that the people of the kingdom of England should find for him three hundred knights to remain in his service one year, or else give him so much money as to enable him therewith to retain in his service three hundred knights for one year, namely three shillings per day, English money, as the livery of each knight."<sup>1</sup> The way in which Hubert Walter's proposition was met throws light upon the subservience of the National Council. "While all the rest were ready to comply with this," the Chronicler proceeds, "not daring to oppose the king's wishes, Hugh, Bishop of Lincoln, a true worshipper of God, who withheld himself from every evil work, made answer that for his part he would never in this one matter acquiesce in the king's desires." Now, if it could be established that the bishop raised the question as to whether the king had a right to lay an imposition upon the baronage and to require their assent, then we would be justified in saying that Hugh's refusal went far toward anticipating future history. But the evidence does not uphold so generous an inference. In

<sup>1</sup> 4 Rogeri de Hoveden, 40.

the first place, it seems highly questionable whether Hubert Walter really offered the alternative of a money payment,<sup>1</sup> a conclusion which reduces the debate to one on foreign service. But Hugh even here did not raise the general question. "I know," he is quoted as saying, "that the see of Lincoln is held by military service to our lord the king, but it has to be furnished in this land alone; beyond the boundaries of England nothing of the kind is due from it."<sup>2</sup> Hugh, therefore, refused to comply with the royal request on purely feudal grounds. Basing his objection on ecclesiastical privilege, he registered his refusal for the see of Lincoln alone; he did not take his stand in behalf of the barons or even of the whole body of churchmen. The issue as to their relative powers to tax was not raised between king and Council, and the withdrawal of Hubert Walter's demand did not constitute one of the first victories over arbitrary taxation. The withdrawal itself

<sup>1</sup> The implication in *Vita Magna S. Hugonis* is to this effect. Vid. Round. *Feudal England*, 528 et seq.

<sup>2</sup> *Vita Magna S. Hugonis*, 248, in Stubbs, *Select Charters*, 255.

seems to have had its disagreeable consequences. Herbert, Bishop of Salisbury, who stood shoulder to shoulder with Hugh of Lincoln in his opposition, had to pay a heavy fine for his part in the contest, and the Abbot of St. Edmund's was obliged to win back royal favor with a gift of a hundred pounds which he made in addition to the pay of four knights for forty days.

Richard's reign covered only a decade, six months of which he spent in England.<sup>1</sup> Notwithstanding his long absence, during which the National Council began in some small degree to feel itself able to get along without the royal presence, the authority of the king as the supreme initiator of taxation remained unquestioned. In the assessing of taxes,

<sup>1</sup> Beside the instances of taxation cited above, Richard exacted from the tenants of the royal demesne a tax upon movables known as *tallage*. It was semi-feudal in nature, being taken from the dwellers on land held immediately of the king, and consequently the authority of the tax for the time was far beyond question, save as the turbulent elements in the urban populations might assume it as a pretext for a riot. Henry II levied this tax in 1168, 1173; Richard in 1189 and 1194, and probably upon other occasions. These are the only references to tallages in the Rolls of these two reigns. The term appears frequently in later records.

however, the taxpayers had more participation. The justiciars of Richard continued Henry II's practice of assessment through a representative jury.

John,  
1199-1216

John, the youngest son of Henry II, the thinnest figure that ever sat upon the English throne, succeeded to the crown some six weeks after the tragic passing of Richard. Richard was the creation of his own times, the incarnation of the mediæval spirit, and where it fell short he fell short. To attribute the meanness of his brother to any conditions of environment would be to perpetrate a slander upon the times. Yet, notwithstanding the vileness of the king, there eventuated from his reign the first of the three books in what Lord Chatham denominated "the Bible of the English Constitution." The progress toward the finished writing of Magna Carta, especially in so far as the events concern laying of taxes, is the next step in this history.

An interregnum of six weeks elapsed between the death of Richard and the coming to England of John. Then Archbishop Hubert Walter set the crown upon his head and

declared him elected to the kingship. John's stay in England was necessarily brief, because Philip II of France was already in a fair way to win his possessions on the far side of the Channel. For his expedition into Normandy John exacted a scutage of two marks on the knight's fee; the rate was unusually high, almost without precedent.

Being unable to make head against Philip, John's heavy taxation John concluded a truce for which he had to pay 30,000 marks. The Jews had to pay a good deal of it and in addition John took a carucage of three shillings on the carucate, which, like the charge of scutage, was an exceedingly high rate. John laid this imposition, apparently, solely upon his own authority; Roger Hoveden says that he "took" the carucage and makes no mention of a Council.<sup>1</sup> He demanded the aid, and the justices issued the edicts. In 1201 John contributed, at the instance of a papal delegate, a fortieth of his revenues for the Crusade; from his barons he urged a similar offering, not "as a matter of right or of custom or of compulsion." Freeholders and tenants by knight's service

<sup>1</sup> 4 Rogeri de Hoveden, 107.



paid at a similar rate; just what liberty they had in refusal is shown in the direction of Geoffrey Fitz-Peter, the justiciar, at the end of his address to the sheriffs: "And if any persons shall refuse to give their consent to the said collection, their names are to be entered in the register, and made known to us at London."<sup>1</sup> In the same year he exacted a scutage at the high rate of two marks on the knight's fee.

Scutage, a  
cause  
leading to  
the  
Charter

The importance of the part which scutage played in the tragedy of John can hardly be overestimated; it was the great moving cause which brought about the crisis of 1215 and Magna Carta. Not only did John raise scutage to an amount which had not been equalled since the Scutage of Toulouse in 1159, but he levied it as though it were a regular and almost annual obligation. Previously understood as a commutation arranged at the pleasure of the king for knight's service not rendered, as an extraordinary impost reserved for extraordinary occasions, John changed its character and used it as a means of supplying his heavy financial needs, irrespective of customary right or of shrewd policy.

<sup>1</sup> 4 Rogeri de Hoveden, 188, 189.

John began with a demand of two marks on the knight's fee.<sup>1</sup> The barons had accustomed themselves, during the reigns of Henry and Richard, to expect at the outside a demand of twenty shillings; sometimes indeed the imposition had fallen to a single mark or even as low as ten shillings. His second scutage came in the third year of his reign, two marks on the fee. Then for four successive years John kept his barons on edge with annual scutages of two marks each. In 1205-06, apparently fearing a storm, he reduced his imposition to twenty shillings, and then waited for three years before laying another. The three years of relief, however, were not as innocent as they seem; it was in 1207 that John broke

<sup>1</sup> Miss Kate Norgate, *John Lackland*, 123, note 1, gives a corrected version of the list of scutages given in 1 *Liber Rubeus de Scaccario*, 10-12:

	scutage of John	1198-1199, 2 marks on the knight's fee.					
First	"	"	1200-1201, 2	"	"	"	"
Second	"	"	1201-1202, 2	"	"	"	"
Third	"	"	1202-1203, 2	"	"	"	"
Fourth	"	"	1203-1204, 2	"	"	"	"
Fifth	"	"	1204-1205, 2	"	"	"	"
Sixth	"	"	1205-1206, 20 shillings	"	"	"	"
Seventh	"	"	1209-1210, 2 marks	"	"	"	"
Eighth	"	"	1210-1211, 2	"	"	"	"
Ninth	"	"	1210-1211, 20 shillings	"	"	"	"
Tenth	"	"	1213-1214, 3 marks	"	"	"	"
Eleventh	"	"					

with the Pope, and the freedom to plunder ecclesiastics which this quarrel gave him, made unnecessary for the moment any further demands upon the baronage. But this source of revenue shortly proved insufficient, and John turned again toward scutage. In the two financial years from 1209 to 1211, he laid three scutages which aggregated some seventy-three shillings on the knight's fee. Then for the space of two years John paused.

Inquest of  
Service,  
1212

But it was only a pause. On June 1, 1212, he caused to be taken the Inquest of Service, by which he sought to bind the cord more tightly upon his demesne tenants by ascertaining in the now familiar manner of the local jury, how great was the return which he might expect from the lands of each crown vassal. It is easy to see in this Inquest, recalling in its nature Domesday Survey and the Inquest of 1166, the intended basis for another imposition of scutage.<sup>1</sup> It came in 1213-14, when John made the wholly unprecedented levy of three marks on the knight's fee. Apparently he was doing all he could to hurry

<sup>1</sup> See McKechnie, *Magna Carta*, 91-93.

the crisis which should lead him to Runnymede.

There were two features of John's use of scutage aside from the magnitude and frequency of his levies which made them particularly onerous. The first had to do with the fines which he exacted from such of the baronage as were delinquent in paying the imposts of Richard, some of which had been in arrears since 1190. Miss Norgate notes an instance which illustrates John's habit, and throws light upon his character. Two men of Devon in 1201 were charged with fines by reason of their absence from the train of Richard in 1193, and the cause of their failure was this, that "they had been with Count John." At the moment John was in rebellion against Richard, but now that he was become king in Richard's place, he exacted fines for service the nonperformance of which he himself had been the cause of.<sup>1</sup> The collection of fines owing to Richard bore with special heaviness upon the northern baronage and these, it will be remembered, were the leaders in the assault upon John in 1215.

Attendant  
abuses of  
John's  
levies of  
Scutage

<sup>1</sup> Miss Norgate, *John Lackland*, 122.

The other great abuse which John introduced into the levying of scutage was his subversion of the theory that the payment of it by the vassal wholly acquitted him of his obligation to the king for that occasion. John endeavored in a number of instances to make him liable for personal service in addition, and for fines in case he failed to be present in his train. In 1199 John exacted fines from those who did not accompany him to Normandy; in 1201 he accepted money-payment as a substitute for service; in 1205 he fined the tenants-in-chivalry after he dismissed them from service in the host. In these years scutages were laid as well.<sup>1</sup>

Thus did John make over scutage; it had become a heavy impost upon the lands of demesne tenants, an almost annual charge, and a tax foreign to its original character as a commutation for personal service. A rebellion culminating in the exaction from John of a written contract between him and the baronage, detailing their mutual relations was the natural consequence.

But the knights were by no means the only

<sup>1</sup> Miss Norgate, *John Lackland*, 123-124.

body of Englishmen whom John alienated by his frequent levy of taxes. The clergy, already irritated by John's quarrel with the Pope and his seizures of ecclesiastical property, were ready to combat the king in any further attempt to tax them. At a Great Council at London on the 8th January, 1207, the king asked "the bishops and abbots to permit the parsons and the beneficed clergy to give to the king a fixed sum from their revenues."<sup>1</sup> The prelates did not consent, and John brought the matter up again at a second Great Council which he convened at Oxford on the 9th February. There were present an "infinite multitude of prelates of the church and magnates of the realm," and John again addressed the ecclesiastics. The bishops "unanimously answered that the English church could in no wise sustain what was unheard of in all the ages before." The king, "taking wise council," withdrew his demand, but he did not abandon his project. "Afterward he ordained generally throughout the kingdom that every man . . . give a thirteenth part to the king" of revenue and movables. The

Antagonism of the clergy

General demand of a thirteenth of movables

<sup>1</sup> Ann. Waverl. a. 1207, 258. In Stubbs, *Sd. Chart.* 273.



demand applied to all men, no matter from whom they held their lands.<sup>1</sup> Against the imposition, the earlier analogues of which were the Saladin Tithe and Richard's ransom, "all murmured, but none dared to contradict" the king, except Geoffrey of York; he did not consent, but openly refused, and then had to fly from England to escape John's anger.<sup>2</sup> The writ for the assessment of the thirteenth has it that the tax was provided "by the common advice and assent of our Council at Oxford."<sup>3</sup> How whole-souled was the assent is revealed by the Chronicler; "none dared to contradict."

Normandy  
is lost

The time was at hand when men would no longer endure the extortionate exercise of an unchallenged royal right. There were a number of conditions and circumstances aside from the burdensome taxes which were pointing toward Runnymede and Magna Carta. By 1204 John had come to the end of his day in France. Normandy was lost. The effect

<sup>1</sup> In 1204 John "took" a seventh of movables. <sup>2</sup> Rogeri de Wendover, 173.

<sup>3</sup> Rogeri de Wendover, 210.

<sup>4</sup> In Stubbs, *Select Charters*, 283.

upon England was marked; the Norman baronage was obliged to choose between England and the Continent. Hereafter tyranny and good-rule of the English kings were alike felt solely at home, and the barons cast their eyes not across the Channel, but upon their lands in England. The English were for England and the nation was born, the first conscious act of which was to be the enactment of Magna Carta.

During the seven years from 1206-1213 John had his disgraceful quarrel with the pope, a quarrel which ended in the enfeoffment of England with Innocent as feudal overlord. The matter is foreign to the subject in hand, save as the struggle, especially in the early development of it, gave John a pretext for confiscating the ecclesiastical holdings and thereby relieving the barons of a scutage for the space of about four years.

John, conceiving that peace with the Pope meant full mastery of affairs, was seized with an ambition to reconquer Normandy. To this end he tried to induce the barons to follow him into Poitou. They refused, first on the ground that John was not yet fully absolved

from his excommunication; and then, after this objection was removed by Stephen Langton on the 20th July, 1213, they raised the old plea that they were not bound by their tenure to follow the king abroad. John determined to enforce their attendance upon him by show of arms.

Council at  
St. Albans,  
4th August,  
1213

Before he started to the north, where the seditious movement had its center, an assembly was held at St. Albans on the 4th August by Archbishop Langton, and the justiciar Geoffrey Fitz-Peter. Its purpose was to assess the amount due to the ecclesiastics in consequence of the damage sustained by church property during the quarrel with the Pope. But its great importance lay in the body of men who made it up. It is in so far as we have record, the first occasion that representatives of the lesser folk were summoned to a National Council.<sup>1</sup> Beside the bishops and barons who attended, there were present the reeve and four men from each township on the royal demesne. The Council advanced somewhat beyond the simple purpose for which it was summoned; the justiciar issued an edict

<sup>1</sup> 1 Stubbs, *Const. Hist. Eng.* 566.

against unjust exactions, to be observed as the sheriffs valued their lives and limbs, and commanded the observance of the good laws of Henry I.<sup>1</sup>

Later in the year to Oxford, the non-noble representatives were again called, and at the initiation of John himself. John hoped to win to himself by this act of respect the support of the smaller landowners against the threatening barons. The sheriffs were to send up, beside the knights holding from the king, four discreet men from each county "to talk with us," as the writ had it, "concerning the business of our realm."<sup>2</sup> This, provided subsequent events had kept pace with it, was an immensely long step forward; indeed the provisions of Magna Carta themselves do not advance to the point thus falteringly and unworthily reached by John. It provided a precedent for the representation of the third estate in the councils of the nation; and though it is not known whether or not any action was taken relative to the levying of taxes, or even whether the council was held

Non-noble  
representa-  
tives called  
to Oxford,  
1213

<sup>1</sup> 3 Rogeri de Wendover, 262.

<sup>2</sup> The writ is in Stubbs, *Select Charters*, 287.

at all, nevertheless the fact that representation for the moment was provided for, marks the step in the light of the present, as of great, almost of profound, importance in the consideration of parliamentary taxation.

Events  
leading to  
Runnymede

It would be wandering far afield to trace the final struggles of John with his infuriated barons. It is sufficient to note that it was an unauthoritative demand of taxation which pulled the structure of John's misgovernment crashing down upon his head. On the 26th May, 1214, John issued writs for the collection of a scutage at the quite unprecedented rate of three marks on the knight's fee, for which there was not a shadow of consent. The northern barons, the same who had refused personal service, now refused likewise to pay scutage. In the face of precedent to the contrary, they denied their liability to follow him, not merely to Poitou but to any district beyond the Channel, or to pay him composition for not doing so.<sup>1</sup> At his interview with the contumacious barons in November at

<sup>1</sup> 2 *Memoriale Walteri de Coventria*, 217. "Dicentes se propter terras quas in Anglia tenent non debere regem extra regnum sequi nec ipsum euntem scutagio juvare."

Bury St. Edmunds, he reiterated his demand, but they remained steadfast in their refusal.

From that time until King and Barons met on the meadow near the Thames called Runnymede, John's sky was darkening. He did his best to avoid the tempest, but with no success. He attempted to break the union of his enemies by giving the church and the people of London special charters; it was the church, headed by Stephen Langton, which stood shoulder to shoulder with the barons in unending hostility to John, and it was the citizens of London whose adherence to the baronial cause determined the final contest against the king. John bought the services of mercenaries to fight his battles for him, but when he became penniless, they fell away. With every expedient he could summon in his extremity, he tried to avoid the breaking of the storm. But the whole nation was against him. The men of the North, who had been steadfast from the beginning in their opposition to John, were joined by barons of similar mettle throughout the rest of England. The citizens of London when they joined the ranks of John's enemies were followed by the earlier

partisans of the king, save only those few who were attached by interest or necessity. He signed the Charter the 15th June, 1215, in the full hope that with the passing of the tempest he might forget his promises.

Magna  
Carta,  
15th June,  
1215

The Great Charter, in form granted by John as a voluntary gift to the nation, was in reality a treaty concluded between him and his barons. That its provisions relative to taxation are important has already been hinted at; as a matter of history, the recurrence of references to these particular sections of the Charter proves the esteem in which Englishmen of later generations regarded this early book of their Bible of Liberties. Whether this veneration, displayed by the framers of subsequent and perhaps equally important instruments, was based upon the intrinsic value of the Charter or upon nothing firmer than sentiment, is somewhat of a mooted question.<sup>1</sup> The fact that it was held in such esteem is for us the important and sufficient reason for considering it in detail. It is essential to understand upon what the later champions of parliamentary taxation

<sup>1</sup> See McKechnie, *Magna Carta*, 144-150.

based their arguments, even though those arguments presumed interpretations of Magna Carta which the framers of the Charter would have been far from admitting.

The twelfth chapter,<sup>1</sup> taken with the four- Chapter 12  
teenth,<sup>2</sup> serves as the legal basis for much of the eloquence against arbitrary taxation from the time of John to the acceptance of the United States Constitution. It has been taken to admit "the right of the nation to ordain taxation"<sup>3</sup> and even as the surrender of the "royal claim to arbitrary taxation."<sup>4</sup> An analysis of the contents and application of the twelfth chapter together with additional comment on the fourteenth may throw some light on the substance for these assertions.<sup>5</sup>

<sup>1</sup> Chapter 12. No scutage or aid shall be imposed in our kingdom, except by the common council of our kingdom, except for the ransoming of our body, for the making of our oldest son a knight, and for once marrying our oldest daughter, and for these purposes it shall be only a reasonable aid; in the same way it shall be done concerning the aids of the city of London. Adams and Stephens, *Select Documents of Eng. Const. Hist.* 44. Latin text, Stubbs, *Select Charters*, 298.

<sup>2</sup> Below, 66.

<sup>3</sup> 1 Stubbs, *Const. Hist. Eng.* 573.

<sup>4</sup> Taswell-Langmead, *Eng. Const. Hist.* 101.

<sup>5</sup> See McKechnie, *Magna Carta*, 274, 284, 291-301.



The impositions which are specified in the chapter are "scutage" and "aid." The arbitrary levy of scutage upon the lands of his tenants was the chief moving cause which brought John to Runnymede, and this chapter undertook the correction of the abuse of abuses. The aids mentioned are to be distinguished from the incidents of feudal tenure, reliefs, marriages, primer seisins, and similar payments which are dealt with elsewhere in the Charter and belong to the peculiar history of feudalism. The twelfth chapter provides that the three ordinary aids — for ransoming the king, for knighting his eldest son, and for the marriage of his eldest daughter — should be reasonable in amount. These might be exacted by the king as a matter of course, without the common council of the realm. The extraordinary aids, which the Charter places in the same category with scutages, include all other arbitrary feudal exactions levied to meet some particular emergency and in an unusual manner. The Charter places both these extraordinary aids and the obnoxious scutages beyond the pale of royal imposition; hereafter they are leviable

only "by common counsel" of the kingdom. That they were to be laid by the body known as the Common Council is indicated by the provisions of Chapter Fourteen.

The people of London rightfully expected to benefit by the granting of the Charter. According to the last clause of the Twelfth Chapter, it was to "be done concerning the aids of the city of London" in the "same way." The provision is indefinite; whether the "aids" were also to include in their category the more arbitrary and therefore more obnoxious tallage<sup>1</sup> is unknown. The aids were for the most part free-will offerings of the city itself, whereas the tallages were exacted by the king upon his own arbitrary authority as one having the power of a demesne lord over London. And whether or not the phrase "in the same way" means that aids shall be levied by the common counsel of the realm, or merely that they shall be of "reasonable" amount, is difficult of determination. If indeed the former idea was in the minds of the framers of the Charter, when

Provision  
regarding  
London

<sup>1</sup> "Tallage was a tax levied at a feudal lord's arbitrary will upon more or less servile dependants, who had neither power nor right to refuse." McKechnie, *Magna Carta*, 228.

they came to the section providing for the composition of the Common Council, they made no provision for the attendance of any member of the corporation of London, or even for securing their consent. At all events, the king continued to tallage London at not infrequent intervals and almost without question until 1340, when Parliament took the privilege away from Edward III.

Chapter 14

Before we advance to a consideration of the true importance of the Twelfth Chapter, in order to have a complete understanding of its position in the line of progress toward parliamentary taxation, we are obliged to look at the method by which the common counsel of the kingdom was to be taken. Chapter Fourteen<sup>1</sup> lays down the rule according to which the assembly was to be called that should hold this power of assenting to scu-

<sup>1</sup> Chapter 14. "And for holding a common council of the kingdom concerning the assessment of an aid otherwise than in the three cases mentioned above, or concerning the assessment of a scutage, we shall cause to be summoned the archbishops, bishops, abbots, earls, and greater barons by our letters individually; and besides we shall cause to be summoned generally, by our sheriffs and bailiffs all those who hold from us in chief, for a certain day, that is at the end of forty days at least, and for a certain place; and in all the

tages and aids. The method of summons was simple; it involved the issuance of writs, individually to the archbishops, bishops, abbots, earls, and the greater barons, and collectively to the lesser barons through the agency of the royal sheriffs and bailiffs. The writs gave at least forty days' notice as to the place and time of meeting, and specified the business which furnished the occasion for the Council. As for its composition, the answer is very simple; it was a gathering of tenants-in-chief of the king, of crown vassals. The line between the greater and the lesser barons was ill-defined. Roughly, however, it divided the baronage into classes, one of which included the baron whose holdings embraced the major part of a county, and the other the tenant of the king whose dwelling was a cottage set in his dozen acres. It is probable that the lesser barons played no

letters of that summons, we will express the cause of the summons, and when the summons has thus been given the business shall proceed on the appointed day, on the advice of those who shall be present, even if not all of those who were summoned have come." Adams and Stephens, *Select Documents*, 44. The Latin text is in Stubbs, *Select Charters*, 299.



considerable part in the assembly, and that their attendance or non-attendance was of little consequence. The light of the lesser folk was as yet hid under the bushel.

The  
advance  
toward  
Parlia-  
mentary  
taxation

It is a conclusion easily drawn from the text of the two chapters that this was a body of feudatories called together for the purpose of making feudal payments. The members of the Commune Concilium were the vassals of the crown and, save in rare instances, none other; the taxation to which they were to give their consent according to the terms of the Charter, included no carucage or other general tax, but only the scutages and aids which feudal tenants of the king by military service were expected to pay him as overlord. Furthermore, the idea of representation in the strictly technical sense into which present usage has frozen the word, was quite wanting. It is true that a consent by the barons gathered in the Council to an imposition levied in accordance with the notice stated in the summons, was binding upon the barons who did not attend, but this was on the principle that absence gave consent, not that the consent of the majority was binding upon a dissen-

tient minority. The instance is quoted of the Bishop of Winchester who in Henry III's time was relieved of his assessment because he had opposed the levy in the Council. John had introduced definite representation in his summons to the Oxford Council in 1213, by directing the sheriffs to send up "four discreet knights" from their counties to treat with him "concerning the business of his realm." In respect of this, looking at it in the light of later progress, the Great Charter is positively retrogressive.

The conclusion is thus forced upon us that save in the two cases of scutages and extraordinary aids, with possibly the addition of a third in the shape of tallaging the city of London, supreme authority over general taxation remained in the hands of the king. The Charter provides solely for the financial incidents of the feudal relation, and that in the somewhat narrower aspect of tenure by chivalry. The only true taxes, carucage and John's levy on movables known as the thirteenth, were not referred to. It is an anticipation of later history to read into the provisions of Magna Carta either a definite inaugura-

tion of national consent to taxation or of the representative principle.

But the wedge was driven in. Notwithstanding the omission of both the Twelfth and the Fourteenth Chapters in subsequent renewals of the Charter, the king lived up to the principles therein set down; and notwithstanding the absence in Magna Carta of provision for parliamentary taxation in fact, it was there in embryo. The nation, headed by the barons, had set itself to the correction of abuses, and it succeeded in attaining its immediate end. Greater purposes were to follow, born perhaps of the inspiration in the Charter, and with the purposes were to come also the means of attaining them. The nation, having once taken a sip of the cup of control over taxation, would not be content until at last it had drunk deep from the well itself.

### III

#### THE CUSTOM OF PARLIAMENTARY GRANTS 1215-1272

MAGNA CARTA brought to an end the period of absolutism and prepared the way for the control by Parliament of the taxing power. The barons, standing for the moment as the champions of the nation, had wrung from John the first concession. It really was not as great a concession, in so far as the power to tax was concerned, as eager advocates of popular rights have maintained. But it was the protest by the most influential body in the kingdom and in effect by the nation itself against unrestrained use of power by a royal tyrant.

The long reign of Henry III, stormy and contradictory to itself, accomplished one clear step forward. From one cause or another it became customary for the National Council, which in this reign first attained to the title of Parliament, to grant money to the king.

The reign  
of  
Henry III,  
1216-1272

Another step, of vast importance in the later history of parliamentary taxation, but in Henry's time probably not of intimate connection with it, was the summons of the lesser tenants and subsequently of the townsmen into the councils of Parliament. There is no sure record that in Henry III's reign a Parliament so constituted voted taxes, yet it is apparent that this differentiation in the national legislative body was the preliminary of the vesting of the taxing power in the House of Commons.

John died in the midst of his reverses the 19th October, 1216. The major part of his vassals were in the field against him, and worse than all, Louis, the heir to France, with French soldiers at his back, was in England at the bidding of the English baronage. Nine days after John's death, his son Henry, a nine-year-old lad, was crowned King of England with small ceremony. After a lapse of two weeks, on the 11th November, a body of barons gathered at Bristol. There were four or five earls, including Pembroke, Chester, and Derby; eleven bishops, Hubert de Burgh, one or two other ministers, and some of the

military leaders. Only one of the executors of the Charter figured at the meeting and this was William of Aumâle. For the most part they were of the party least disaffected by John; the rabid opponents of the old King were in the body of supporters around Louis of France. The Council proceeded to appoint William Marshal, Earl of Pembroke *Rector regis et regni*, being unwilling to elect a relative of the young King to this responsible position. The next day they reissued the Charter by common consent in the King's name, with the important omission of Chapters Twelve and Fourteen.

Reissue of  
the Charter  
with  
omissions

The reason for leaving out restrictions upon the royal power so vital to the feudatories is readily apparent. The Council was distinctly royalist; as such, especially in view of the fact that John, the great offender, was dead, it did not favor restricting the royal power. Further, the barons in effect were themselves the king, and being so, there was no particular object in limiting their own power over themselves. That the Fourteenth Chapter would be observed, whether it were specified or not, dealing as it did with the sum-

moning of the Council, went as a matter of course.<sup>1</sup>

One of the objects in the minds of the Council in reissuing the Charter was to win adherents from the standard of Louis. In this they were partly successful; but it took the decisive defeat delivered to the French prince at the Fair of Lincoln in May of the following year, coupled with the loss of his reinforcing fleet in August, to bring about peace. A treaty between Pembroke and Louis followed in September, and secured to the belligerent barons the liberties of the realm and the restoration of their lands. General pacification between the parties came the 6th November following, with the second reissuance of the Charter, this time in the form which later generations of kings should be called upon to confirm.

There was introduced into this draft of the Charter a change which materially affects taxation. Though Chapters Twelve and Four-

<sup>1</sup> Cap. 42 of this reissue of the Charter states the promise of the king to return to the matter of the levying of scutages and aids, when the occasion should be more propitious. McKechnie, *Magna Carta*, 168-169.

Second  
reissue  
of the  
Charter

teen of John's issue are ignored, there is in the Forty-Fourth Chapter a distinct reference to the levying of scutage.<sup>1</sup> "Scutage," it says "shall be taken as it was wont to be taken in the time of King Henry our uncle." In other words the consent of the barons was to be no longer a prerequisite to the levying of a scutage. The only restriction placed by written law upon the king was that he should take scutages according to the custom of Henry II, — that is, that they should not exceed in amount twenty shillings on the knight's fee. The barons who remade the Charter thus abandoned the semblance of taxation by the baronage which was provided for under the terms of John's enactment. It was only a shadow which they left behind, but nevertheless it was the shadow from which something substantial could emerge, the germ from which a creature of immense vigor might develop. The omission, it is not too much to say, is an exceedingly apt vindication of the contention that at the time the

Its  
omissions

<sup>1</sup> Cap. 44. Scutagium decetero capiatur sicut capi consuevit tempore, regis Henrici avi nostri. McKechnie, *Magna Carta*, 585, where also is the text of the entire reissue.

Charter of John was enacted, the framers of the instrument intended to create no barriers against the royal power of levying general taxation; if they had had in mind so fundamental a change, it is unlikely that in 1217, even though the radical faction was still feeling the sting of defeat, these provisions should have been allowed to lapse.<sup>1</sup> It is profoundly indicative both of the modest ambition of the barons in 1215 and the obscurity of their political vision in 1217.

Text of  
1215 is  
adhered  
to in  
practice

But the future was fairer than the conditions presaged. As a matter of fact, the king observed in the majority of instances the conditions imposed by the Charter of John. Scutages of even less amount than those "taken in the time of King Henry" were taken with the consent of the National Council, the sessions of which "continued as from time immemorial," though the provisions for its summons had been laid aside. That the barons were intending to retain control as under the Charter is indicated by the fact that a scutage under the date 24th January, 1218, "was assessed by the common council

<sup>1</sup> McKechnie, *Magna Carta*, 173-174.

of our realm."<sup>1</sup> Bishop Stubbs believes that this scutage was granted by the identical Council which reissued the Charter the previous November.<sup>2</sup> Furthermore, there is a note of a carucage under the date 9th January, 1218, which "was assessed by the council of our realm," a remark which suggests that not only did this Council determine to grant feudal payments of scutage, but assumed as well the power of registering its assent to a general land tax.

If full credence can be attached to the

<sup>1</sup> 1 *Rotuli Litterarum Clausarum*, 349.

<sup>2</sup> 2 Stubbs, *Const. Hist. Eng.* 30, note 1. He bases his belief on the fact that "the orders for the collecting this scutage were issued Feb. 22, the same day on which the writs for proclaiming the charters are dated," and cites 1 *Rot. Claus.* 377. In the same note he records the following instances of taxation:

"June 7, 1217, the king mentions a carucage, hidage and aid, 'quod de præcepto nostro assisum est.' 1 *Rot. Claus.* 310."

"Jan. 9, 1218, Henry mentions a carucage and hidage, 'quod assisum fuit per consilium regni nostri.' 1 *Rot. Claus.* 348.

"Jan. 17, Henry mentions a scutage of two marks on the fee, 'quod exegimus,' and

"Jan. 24, 'scutagium de omnibus feodis militum quæ de nobis tenent in capite, quod ultima assisum fuit per commune consilium regni nostri.' 1 *Rot. Claus.* 349.



Carucage  
"assessed"  
by the  
Council,  
1218

record here given that a tax was "assessed" by the Council, and if the act of assessment can be taken as indicating, so to speak, full-fledged consent on the part of the barons, then we have in this record of the Close Rolls one of the very earliest instances of general taxation by and through the English National Council. That no greater attention was given to the event than the scant sentence in the Rolls, is perhaps not to be wondered at, considering the youth of the king and the coherent Council.

With such a Council, bent apparently upon putting in practice greater privileges than it had given itself in theory, the boy Henry began his long reign. The good Earl of Pembroke died in 1219 and Henry was left to the conflicting counsels of Hubert de Burgh and Peter des Roches, the Bishop of Winchester. Growing restive under them at last, in 1223 he secured a declaration from the Pope that he was of age, he being then sixteen, and swore to observe the Charters. But neither of his reissues of the Charter could be called, strictly speaking, voluntary; and liberties extorted, in the sinister words of the sycophant

William Briwere, "ought not by right to be observed."<sup>1</sup> The uneasiness arising out of this uncertain state of the Charters, led to one of the first instances of a grant of money on condition that grievances be redressed, a manner of grant which served the Commons many a turn in their subsequent struggles with royal prerogative.

In 1224 war was on with Philip II for the possession of Poitou. The taxation which had not been severe up to this time, was insufficient for the prosecution of a war with France.<sup>2</sup> The justiciar at the Christmas

<sup>1</sup> McKechnie, *Magna Carta*, 181, quotes Matthew Paris, *3 Chron. Maj.* 76, "Libertates quas petitis quia violenter extortæ fuerunt, non debent de jure observari."

<sup>2</sup> Stubbs, *Const. Hist. Eng.* 37-38, notes the following taxes:

1. Carucage of 2 shillings, taken at the coronation of 1220. *Ann. Waverely*, quoted in Stubbs, *Select Charters*, 321, gives no hint of the authority for the levy save that the king "acceptit" it. The writ (*Sel. Chart.* 351) states that it was granted by the Council.

2. Scutage of 10 shillings after the capture of Biham, granted by the Council, 1221. *1 Rot. Claus.* 458.

3. Scutage of 2 marks for Welsh War, 1223.

4. Scutage of 2 marks for siege of Bedford.

5. Contribution to crusade 1223, assented to by Council.

*1 Rot. Claus.* 516.



Council 1224 brought forward a demand for a fifteenth of all movables.<sup>1</sup> The barons, acting beyond the power which even the Charter of John had given them, refused to consent, unless Henry should "of his own natural and good will" renew Magna Carta.

Conditional  
grant of a  
fifteenth  
of movables,  
1224

He yielded, and reissued both the Charter of Liberties and the Charter of the Forests in practically the same form as the issue of 1217. That the reissue partook of the nature of a contract between the barons and the king is evinced in the concluding portion of the Charter itself.<sup>2</sup> There it is openly stated that "the archbishops, bishops, abbots, priors, earls, barons, knights, freeholders, and all persons of the realm, give the fifteenth part of all movables to the king," "for this concession and granting of liberties."

Here is an unequivocal instance of a tax

<sup>1</sup> 2 Matt. Par., *Hist. Angl.* 268-269.

<sup>2</sup> Stubbs, *Select Charters*, 354. "Pro hac autem concessione et donatione libertatum istarum et aliarum libertatum contentarum in carta nostra de libertatibus forestæ, archiepiscopi, episcopi, abbates, priores, comites, barones, milites, libere tenentes et omnes de regno nostro, dederunt nobis quintam decimam partem omnium mobilium suorum."

on movables, applying to every person in the kingdom from the archbishops and great nobles down, granted explicitly by the Council in return for Henry's specific promise to adhere to the Charter. It was the most natural thing in the world, that the barons should demand a favor in return for granting one. They had Henry in a box and his acquiescence is none the less natural. Yet the action is of great importance in view of later developments. Time and time again the situation was to be repeated, and out of repetition was to come usage which would be frozen into law. It is of vast interest, therefore, to note the appearance so early of the conditional grant.

The Council continued to exercise the right not merely of making grants of money in consideration of a redress of grievances, but also of refusing to make a grant at all, whenever such a stand suited their convenience. In 1232 the Earl of Chester, being spokesman for the barons, objected to a request for money with which to carry on the French war, on the plea that they had served in person; the clergy sought postponement, raising

Other  
conditional  
grants and  
instances  
of refusal

the significant plea of an incomplete assembly of prelates.<sup>1</sup>

Again, five years later, Henry being in dire distress for money because of unwise expenditure and the lightness of recent taxation,<sup>2</sup> summoned an extraordinary council of barons and prelates "to arrange the royal business" and matters concerning the whole kingdom. William de Ralegh, a clerk of the king, introduced the royal needs, saying that "the king humbly demands assistance of you in money." Sensing beforehand an attitude of antagonism, he made this remarkable concession, that "the money which may be raised by your good will shall be kept to be expended for the necessary uses of the king-

<sup>1</sup> 1 Matt. Par. 339.

<sup>2</sup> Instances of recent taxation are:

1. Scutages 1229, 1230, 1231, each for military expeditions.

<sup>2</sup> Stubbs, *Const. Hist. Eng.* 42, note 3.

2. A tenth of all property 1229. Refused by the barons and paid by the clergy. 2 Matt. Par. *Hist. Angl.* 316.

3. Tallages 1227, 1230, 1234. 1 Dowell, *Taxation and Taxes*, 52.

4. A fortieth of movables, 14 Sept., 1232, 24,712 marks granted by the Council. 2 Matt. Par. *Hist. Angl.* 345.

5. Two marks on the knight's fee on occasion of the marriage of the king's sister, 1235, granted by the Commune Concilium. 1 Madox, *Hist. Ex.* 593.

dom, at the discretion of any of you elected for the purpose." But the barons failed to perceive the greatness of the opportunity which lay open to them. Had they but availed themselves of it, they would have gone far toward the establishment of the power of the legislature over the public purse, and might have accomplished in a moment, had they been able to maintain their control, what many succeeding parliaments were to strive for in vain. But apparently the baronage was not gifted with political perception; they saw only a demand for money and "began to murmur." They complained that the foreign advisers of the king had been wasting the royal revenue and that there was no great enterprise afoot which required a full treasury. Then the king proceeded to conciliate them with what in comparison with the proposed concession of the disbursing commission, was a mess of pottage; he ordered the renewal of the sentence of excommunication of all violators of the Charter, promised to abide by it himself, and received three additional Councillors named by the Council.<sup>1</sup> Thereupon a grant

Offer of a  
disbursing  
commis-  
sion, 1237,  
rejected

<sup>1</sup> 2 Matt. Par. *Hist. Angl.* 393-394.

of the thirtieth part of all the movable property in the kingdom was made by the lords "for themselves and their villans."<sup>1</sup> In this phrase of the writ is evidence in favor of the supposition that the lords of the Council regarded themselves as authoritative spokesmen for their vassals. The money was to be collected in accordance with the prescription of the Council; four knights and a clerk (appointed apparently by the king), were to receive the assessment of each township from the reeve and four men, elected for the purpose. Here was evidence of progress; the step was not very long from the assessment and collection of a tax to the granting of it by the people themselves. The king profited to the amount of some £22,600.

After a lapse of five years, Henry found himself, as he supposed, on the brink of a war with France; he therefore sent out orders for a session of the Council. Apprehending that the summons presaged a demand for money, the baronage, "because they knew that the king had so often harassed them in this way on false pretences, . . . they made oath to-

<sup>1</sup> The writ is in Stubbs, *Sel. Chart.* 366.

gether that at this council no one should on any account consent to any extortion of money to be attempted by the king."<sup>1</sup> When the Council met, therefore, Henry was greeted with a refusal, on the grounds that he had engaged in the war without asking their advice, and that "he had so often extorted large sums of money from them, which was expended with no advantage; they therefore now opposed him to his face, and refused once more to be despoiled of their money to no purpose." Harking back to the conditions of the grant of 1237, and laboring, apparently, under the misconception that the king had promised that the money be spent under the direction of a disbursing commission, they complained because they did "not know and have not heard that any of the aforesaid money has been expended at the discretion or by the advice of any one of the said four nobles."

Refusal of  
a grant,  
1242

Thus did they refuse. But Henry was neither to be robbed of his hoped-for supply nor yet induced to give further concessions. He therefore turned to strategy. Summoning

<sup>1</sup> 1 Matt. Par. *Chron. Maj.* trans. by J. A. Giles, 397-404.

the barons and prelates to him one by one, he "begged pecuniary aid from them, saying, 'See what such an abbot has given to aid me, and what another has given me.'" By such means he managed to wring from the barons individually what he had been unable to induce them to give in the Council. With the money thus obtained Henry set out on a campaign doomed to ignominious failure. Before he came back to England he used this expedition as the pretext for a scutage of twenty shillings on the fee.<sup>1</sup>

Similar success did not meet Henry, when, two years later, he attempted to raise funds with which to prosecute a Scotch war. In the fall <sup>2</sup> of 1244 Henry summoned his Council to London; he laid before it the story of his recent journey to Gascony and used the debts which he had incurred as the pretext for a grant.<sup>3</sup> He addressed the baronage in person in the expectation that they would not refuse a face to face appeal; the nobles, how-

<sup>1</sup> 2 Matt. Par. Hist. Angl. 466.

<sup>2</sup> Matthew Paris is not clear as to the time of year. 2 Stubbs, Const. Hist. Eng. 62, note 3, fixes the date as between 9th Sept. and 18th Nov.

<sup>3</sup> 2 Matt. Par. Chron. Maj. trans. Giles, 7-9.

ever, withdrew to consult amongst themselves, with the result that a committee of twelve, representing the three bodies of prelates, earls, and barons, was chosen to draw up an answer to the king. Simon de Montfort, Earl of Leicester, whose great opportunity was not yet come, served as one of the four earls; and Richard de Montfichet, one of the few executors of Magna Carta who still survived, acted amongst the delegation from the baronage. Thereupon was consistent with the works of both. The committee complained of the nonobservance of the Charter, of the rash and fruitless expenditure of money, and demanded the appointment of a justiciar and a chancellor "by whom the kingdom might be consolidated."

The king, however, was unwilling to act under compulsion; he refused the petition and ordered the barons to reassemble three weeks after the Purification of the Virgin in 1245. Thereupon the nobles declared their willingness to grant him money, provided that in the meantime the king should choose proper counsellors and institute reforms. The proviso which was of greatest importance, however, was this, "that whatever money was granted

Great Council in 1244 holds out for supervised expenditure



to him should be expended by the twelve . . . nobles for the king's benefit." These conditions were greatly to Henry's distaste; he set himself to wring money from the prelates, but with no success. Then the Council "broke up, much to the king's discontent."

A scheme  
of control.

The historian proceeds to give a scheme of reform which may possibly be the result of the deliberations of the magnates, presented by them to Henry for his consent.<sup>1</sup> It provides for the election by the Council of four of its "most discreet" members to serve as counsellors of the king. "By their inspection," the account states further, "and on their evidence the king's treasury shall be managed, and the money granted to him by the community in general shall be expended for the benefit of the king and kingdom according as they shall see to be most expedient and advantageous." The four counsellors were to have numerous other powers and duties, many of which are suggestive of the scheme subsequently put into practice by Simon de Montfort.

Of itself this scheme of reform is relatively unimportant. But taken with the demand of

<sup>1</sup> 2 *Matt. Par. Chron. Maj.* trans. Giles, 11-12.

the magnates that twelve of their number supervise the expenditure of such money as they should grant to the king, it assumes some significance. It points toward the growing tendency on the part of the barons to assume control, not only of the granting of taxes, but of the expenditure of the money so raised as well. For some centuries thereafter the question as to whether that control should lie with the king or subjects was to be a prime subject of contention.

It would be a fruitless and uninteresting task to illustrate further the control over matters of taxation exercised by the Council during this part of the reign of Henry III. The instances in which the royal requests were refused, and the occasions when the king attempted to evade the refusal by private solicitation were not infrequent.<sup>1</sup> A single citation may be excused, however, because of the element of sinister humor which pervades it.

<sup>1</sup> The following taxes and refusals are variously cited:

1245. Grant of an aid of 20 shillings "ad filiam maritandam." 1 *Madox, Hist. Ex.* 594.

1246. Scutage of three marks on the fee. 2 *Stubbs, Const. Hist. Eng.* 65, note 5, citing Pipe Roll of 1246.

1248. Noted above.

1249. Appointment of justiciar, chancellor, and treasurer



Henry asked the Council for money on the 9th February, 1248, and was greeted with a demand for a justiciar, chancellor, and treasurer to be appointed by the Council itself. This appeared distasteful to Henry, who was learning the trick of independence. After a delay of some five months he refused compliance; whereat he discovered that no grant was forthcoming from the Council.<sup>1</sup> Thereupon Henry announced to his good citizens of London that he would pass the Christmastide with them, in order that he might freely accept of their New Year's presents.<sup>2</sup>

demand. Failure. 2 Matt. Par. *Chron. Maj.* trans. Giles, 308-309.

1252. The Pope held Henry to his promise of a Crusade made in 1250, and authorized him to exact a tenth of the revenues of the clergy for three years. The clergy delayed. Henry turned to the barons and asked for a scutage; the barons answered that their reply would depend upon the prelates. 2 Matt. Par. *Chron. Maj.* trans. Giles, 518-527.

1253. Debate on the above. At last Henry obtained his tenth from the clergy and an aid of 3 marks from the tenants-in-chief for the knighting of his son. The condition was the confirmation of the Charters, and a great oath for his faithful observance of them. 3 Matt. Par. *Chron. Maj.* trans. Giles, 22-24.

<sup>1</sup> 2 Matt. Par. *Chron. Maj.* trans. Giles, 254-257, 266-267.

<sup>2</sup> 2 Matt. Par. *Chron. Maj.* trans. Giles, 287.

It would be too much, it seems, to say that the numerous cases in which the Council denied to the king the financial assistance which he urged upon them, prove the full control, in any modern sense, of this body over taxation. The relation of Council to king was still personal; the barons granted their support or refused it, as vassal to feudal lord, by no means as representatives of the nation to the government. The grants seem, indeed, to have been binding upon the nation at large, and consequently it might be argued that the barons were really representatives of the nation, capable of acting for it. But the argument is based upon a confusion of terms; representation in the modern sense was not at that time in England invented or thought of. A baron who by virtue of his prominence or his power makes a promise which is binding upon those of less prominence or less power, is not a representative but a small despot. Such a position the barons held who composed the National Council under Henry III; they acted for the nation, but they were not in the modern sense representatives. The inference is readily drawn,

Representation as it existed in Henry's National Council

then, that a body thus constituted could not exercise any more than a personal control over taxation.

The time was at hand, however, when the period of transition to the impersonal relation should begin, — the relation which exists between representatives of the nation and the government as personified in the king, the relation recognizable to-day between the layers of taxes and the spenders of the proceeds of taxation.

**Knights of  
the shires  
called to  
the Coun-  
cil, 1254**

In 1254, during Henry's absence in Gascony, the regents, Queen Eleanor and Earl Richard Cornwall, took steps to amplify the Council for the time being with the lesser feudal tenants for the purpose of laying taxes.<sup>1</sup>

<sup>1</sup> One of the royal writs ran thus:

"Rex Vicecomiti Bedeford, et Bukingeham., salutem. . . . Tibi districte præcipimus, quod præter omnes prædictos venire facias coram consilio nostro apud Westmonasterium in quindena Paschæ proximo futuri, quatuor legales et discretos milites de comitatibus prædictis quos iidem comitatus ad hoc elgerint, vice omnium et singulorum eorundem comitatum, videlicet duos de uno comitatu et duos de alio, ad providendum, una cum militibus aliorum comitatum quos ad eundem diem vocari fecimus, quale auxilium nobis in tanta necessitate impendere voluerint. Et tu ipse militibus et aliis de comitatibus prædictis necessitatem nostram et tam urgens negotium nostrum diligenter exponas, et eos ad

John, at his St. Albans Council in 1213, had had recourse to a similar expedient, though the principle involved was quite different. In the earlier instance a representative reeve and four men from each township and the royal demesne were summoned in order to assess the amount due in restitution to the clergy. In the latter the royal writs directed that from each of the counties two "lawful and discreet knights" be sent up to Westminster, "who together with the knights from the other counties whom we have had summoned for the same day, shall arrange what aid they are willing to pay us in our need." The knights were to be chosen by the counties themselves, probably in the county court, since there the machinery of election already was in existence. The election of knights by the body of suitors who composed the courts of the counties was by no means a new thing; for eighty years there is evidence of the election of such

competens auxilium nobis ad præsens impendendum efficaciter inducas; ita quod prædicti quatuor milites præfato consilio nostro ad prædictum terminum præcise respondere possint super prædicto auxilio pro singulis comitatibus prædictorum." Stubbs, *Select Charters*, 376. Translation in Adams and Stephens, *Select Documents*, 55.

representatives for local purposes, and it would be no startling innovation to extend this function of the courts to the election of representatives in a national council. In the present instance, furthermore, there is in the writ an implication, though the deduction is hazardous, that the matter of the aid received previous consideration in the county courts themselves. "And you yourself carefully set forth to the knights and others of the said counties," so continues the instructions to the sheriff, "our need and how urgent is our business, and effectually persuade them to pay us an aid sufficient for the time being; so that the aforesaid . . . knights at the aforesaid time shall be able to give definite answer concerning the said aid to the aforesaid council, for each of the said counties." The upshot of this Council was disappointing to the crown; nothing resulted except a renewal of complaints against the royal administration. Simon de Montfort, whose position as the defender of the rights of Parliament, was as yet quite misapprehended, took occasion to warn the Council against the policy of the king.<sup>1</sup>

<sup>1</sup> 3 Matt. Par. Chron. Maj. trans. Giles, 75.

The events of the next fifteen years, vital as they are to constitutional history, must be briefly gone over. It is the period of the Barons' War and the Provisions of Oxford, and finally of Simon de Montfort's famous Parliament of 1265. But the years did not intimately affect taxation, save as they provided more or less definitely for the body which should ultimately have control over the granting of taxes. Taxation was a prime cause of the baronial irritation which led to the trouble with the king, but the conflict was not a moving cause in the final attainment by Parliament of exclusive power over taxation. The chain of events, however, in so far as they are pertinent to the subject, must be traced.

At the Hocketide Parliament<sup>1</sup> of 1255 the usual demand was made for an elective ministry and was refused;<sup>2</sup> at the adjourned session of

Strife between king and Parliament

<sup>1</sup> "To a general assembly of the barons at London in 1246, the name of Parliament, which had previously been indiscriminately ascribed to assemblies of various kinds, is for the first time given by a contemporary chronicler, Matthew Paris. Henceforth it became specially though not exclusively, the appellation of the National Council." Taswell-Langmead, *Eng. Const. Hist.* 187.

<sup>2</sup> 3 Matt. Par. Chron. Maj. trans. Giles, 119.

this Parliament the following October, an aid to the king was denied on the distinct ground that the members, all magnates, had not been summoned according to the terms of Magna Carta.<sup>1</sup> The struggle, vain and threatening of future ill, went on through the next year, until by 1257 the king found himself plunged inextricably into debt, much of which was owing to the Pope. The latter had undertaken a war with Manfred with whom was lined up the Hohenstaufen power, to seat on the throne of Sicily Edmund Crouchback, Henry's second son.<sup>2</sup> Henry owed him 135,000 marks, and it is said that the Londoners, the sheriffs, the clergy, and the Jews therefore suffered.

The first Parliament of 1258 was held at London on the 9th April and sat for about a month. The purple robes in which Henry garbed his foreign favorites shone richly against the gray background of his asserted poverty, and their brilliance was enough to blind the eyes of the Parliament to his necessi-

<sup>1</sup> 3 *Matt. Par. Chron. Maj.* trans. Giles, 141-142.

<sup>2</sup> Cf. 2 Stubbs, *Const. Hist. Eng.* 70-73, and references there cited.

ties. Wars were threatened on the northern and western borders, and the Pope was brandishing his sword of excommunication in case Henry continued his dilatory policy toward Apulia. Parliament refused his urgent plea for a tallage of one-third of the movables of the realm, reprehending the simplicity of the king in making his bargain with the Pope.<sup>1</sup> An outbreak was avoided by an adjournment until the 11th June at Oxford.

On that day the barons and higher clergy came together, bringing with them a heavy burden of grievances. A scheme of reform was drawn up in the famous Provisions of Oxford. They projected the control of the government by a number of representative committees.<sup>2</sup> The only point upon which the Provisions of Oxford touch the question of taxation is in the section which arranges for the appointment of a committee of twenty-four "by the whole of Parliament on behalf of the community" to treat of the aid demanded

Provisions  
of Oxford,  
1258

<sup>1</sup> 3 *Matt. Par. Chron. Maj.* trans. Giles, 267-268, 271-272.

<sup>2</sup> 2 Stubbs, *Const. Hist. Eng.* 76-80; Stubbs, *Sel. Chart.* 378 ff.; Taswell-Langmead, *Eng. Const. Hist.* 188-189; 3 *Matt. Par. Chron. Maj.* trans. Giles, 285-288.



by the king for the prosecution of his war. The list of grievances, furthermore, for which the Provisions were to win redress, did not bring up the matter of the royal power to levy taxes in any degree whatsoever.<sup>1</sup> The nearest approach to such an objection came in the complaint against extortions under the feudal law and in the reference to the manner in which prises were exacted. In each instance the remonstrance was not against the principle but against the manner in which the act was accomplished.

Character  
of the  
Provisions

The Provisions of Oxford furnished no advance in the general progress toward parliamentary taxation. The only step was a step backward. They provided for one committee which should have the power of granting an aid to the king, and delegated to another most of the business of Parliament. These were movements, not toward the ideal grasped in the time of Edward I and realized in the Bill of Rights, but of a character distinctly retrogressive. The government was advantageous to none save to those who participated in it, and between the participants there was

<sup>1</sup> Stubbs, *Select Charters*, 382-387, especially caps. 22, 23.

no mediator in case the distribution of advantages should be questioned. Theoretically the king's authority remained, though it was in restraint; in fact it was given to an irresponsible and self-interested body of barons subject to the mutual jealousies which are always the incidents of oligarchic rule.

The provisional government lasted for a year and a half from its erection in June, 1258, without interruption; thereafter it continued for four years with a number of breaks until 1263, the year in which civil war began between Earl Simon and the king.

In the middle of 1261 Henry produced bulls which the Pope Alexander IV had granted to him shortly before he died absolving him from his oath to observe the Provisions, and pronouncing excommunication upon all those who should contravene the absolution.<sup>1</sup> The act of Henry all but brought forward the impending civil war. Simon de Montfort and his colleagues, probably in the hope of winning the popular mind to their cause, acting as chiefs of the provisional government, addressed summonses to the various sheriffs in-

King and  
Earl Simon  
call knights  
of the shire  
to national  
assemblies

<sup>1</sup> 1 Rymer, *Foedera*, part 2, 62.



viting three knights from each shire to attend an assembly at St. Albans. Henry, fearing a general movement against him, sent out counter orders to the sheriffs, requiring them to send knights not to St. Albans but to Windsor, *nobiscum super præmissis colloquium habituros*.<sup>1</sup> In all probability neither of the assemblies met; at least there is no suggestion of a session of either in the chronicles of the time. They assume importance, however, as foreshadowing the later Parliaments of Simon de Montfort, and as indicative of his policy to utilize the county organization in national matters.

Civil War,  
1263

Two years later, in June, 1263, Simon de Montfort began war. The following December the differences between the parties were laid before Louis IX of France for his decision. He, not unsympathetic with the plight of his royal brother, made an award in favor of Henry, saving to the barons and Earl Simon only their rights under the Charter.<sup>2</sup> But Simon de Montfort was in a position to protest against the verdict. He vindi-

<sup>1</sup> Stubbs, *Sel. Chart.* 405.

<sup>2</sup> Louis's award was the so-called "Mise of Amiens." Given in Stubbs, *Sel. Chart.* 406. 1 Rymer, *Foedera*, part 2 83.

cated his attitude at the battle of Lewes, 14th May, 1264, and Henry, his relatives, and his principal adherents found themselves prisoners in the hands of the barons. A compromise was effected by the Mise of Lewes, which, after a reconfirmation of the Provisions, provided for the release of Henry and named a new set of arbitrators.<sup>1</sup> By the fourth article of the compromise, Henry was to take the advice of his counsellors in administering justice and choosing ministers; he was to observe the Charters and to live moderately.

But Earl Simon was not satisfied. He garrisoned all the royal castles with soldiers friendly to his cause, and on the 4th June sent out writs to the counties in the king's name summoning to London the following October, "four lawful and discreet knights," who were to be "elected for the purpose by the assent of the county to act for the whole of that county," and were to "treat with us of the above-stated business."<sup>2</sup> This Parliament when it met proceeded to compose a

Knights of  
the shire  
in Parlia-  
ment, 1264

<sup>1</sup> Stubbs, *Sel. Chart.* 334; *Chron. Rishanger*, Camden Society, 37.

<sup>2</sup> 1 Rymer, *Foedera*, part 2, 88-89.

new scheme of government, the chief feature of which was a standing council, indirectly elected by the barons, which should be the moving force behind all royal acts, — that is, the king was to act only in accordance with the will of the council.<sup>1</sup>

Simon de  
Montfort's  
great  
Parlia-  
ment, 1265

Simon de Montfort on the 24th December following issued writs in the king's name bidding the sheriffs to send up two knights from the shires, and each of some twenty-one especially designated cities and boroughs to send up two citizens and burgesses to London.<sup>2</sup> The Parliament was called for the 20th

<sup>1</sup> This Parliament and the scheme of government which was drawn up at the session is the subject of considerable dispute. See 2 Stubbs, *Const. Hist. Eng.* 93-95; and Medley, *Eng. Const. Hist.* 133-134. The scheme itself is given in Stubbs, *Sel. Chart.* 412 ff, and in 1 Rymer, *Foedera*, part 2, 89.

<sup>2</sup> The writ is in part as follows: "Item mandatum est singulis vicecomitibus per Angliam quod venire faciant duos milites de legalibus, probioribus, et discretioribus militibus singulorum comitatum ad regem Londoniis in octavis prædictis in forma supradicta.

"Item in forma prædicta scribitur civibus Eboraci, civibus Lincolnæ, et ceteris burgis Angliæ, quod mittant in forma prædicta duos de discretioribus, legalioribus et probioribus tam civibus quam burgensibus.

"Item in forma prædicta mandatum est baronibus et probis hominibus Quinque Portuum. . . ." Stubbs, *Sel. Charters*, 415; 1 Rymer, *Foedera*, part 2, 93.

January, 1265. Beside the representatives of the cities and boroughs, there was a very full gathering of the clergy. The baronage, who as a body looked upon Earl Simon's cause with small favor, were called upon to send only twenty-three of their number, five earls and eighteen barons.

It is upon this Parliament that the fame of Simon de Montfort as the Creator of the House of Commons is established. Unless we admit as an instance of borough representation the summons of the reeve and four men from the demesne townships to the St. Albans Council in 1213, we have here the first participation of the burgher class, the Third Estate of the Realm, in the Parliament of the nation. It was to compose, along with the recently admitted representatives of the shires, the House of Commons, and in its hands the destiny of the power to tax was to lie. That Simon de Montfort summoned the citizens and burgesses to the Parliament of 1265 is attributable chiefly to the fact that they were amongst the most ardent of his supporters.<sup>1</sup>

The first  
instance of  
burgher  
representa-  
tion in  
Parliament

The House  
of Com-  
mons is  
fore-  
shadowed

<sup>1</sup> For a fuller discussion of this rather iconoclastic view of Simon de Montfort, see Medley, *Eng. Const. Hist.* 134.

It is extremely doubtful that he acted in accordance with any great scheme of constitutional reform. He called the burghers because he found their support useful, and therein lay the greatest hope for the future; the time was not far distant when a greater than Simon de Montfort should discover that a Parliament in which cities and boroughs and counties were alike represented was the most convenient means of supplying the royal treasury.

As for Simon de Montfort's Parliament, its importance to taxation lies wholly in its significance in the elaboration of the representative principle; there is no record that it did aught with respect to taxation. Its business was mostly confined to concluding arrangements begun in the Mise of Lewes for the government of the kingdom.

Last years  
of  
Henry III

What was left of the reign of Henry III, already stretched beyond its time, is all but negligible. The position of Simon de Montfort was too favorable to keep him clear of jealous rivals. War speedily started up again and in an early battle, that of Evesham, the great earl was slain. Two years thereafter, the royalist party managed to get the upper

hand and the war came to an end. Henry was wise enough, or old enough, not to tempt Providence; he continued his reign according to the dictates of law and of good policy. By the statute of Marlborough in 1267 were granted most of the measures of reform which had been demanded nine years previously in the Mad Parliament of Oxford. With the affairs of state running thus smoothly, Henry moved tranquilly down the long slope of his last years.

In October, 1269, there occurred an incident which, if indeed the report be well founded, sums up the attainments of his reign. Henry brought together a great assembly in honor of Saint Edward, an assembly of magnates lay and clerical, and likewise numbering certain representatives of the cities and boroughs.<sup>1</sup> After the conclusion of the ceremony, Henry convened the barons as a Parliament, and received from it a grant of a twentieth of lay movables. Whether or not the burgesses and citizens participated in the offering to the king is unknown. But if that be the truth, en-

<sup>1</sup> T. Wykes, *Chron. a. 1269, 226-227*, in Stubbs, *Sel. Chart.* 337.

veloped as it is in the mist, then we can see the newly-made legislators actually participating in the most important of legislative functions, and we are assured that the work of Simon de Montfort had indeed borne early fruit.

## IV

LAW OF PARLIAMENTARY TAXATION  
1272-1297

HENRY died the 16th November, 1272, with his son, the great Edward, away on the crusade. But there was no question as to the succession; the most powerful of the barons swore fealty to Edward four days after his father's death, and when he returned to England in the middle of 1274, he was crowned King of England. In the interim, the government was in the hands of the Archbishop of York; the barons still resting after their struggle with Henry III engaged in no warfare other than their usual petty tumults. The regular income of the crown sufficed for the expenses of government.

Edward I,  
1272-1307

The young king whose way to the throne was thus paved for him, was one of the greatest, if indeed he was not in truth the greatest, figure which ever graced the English throne. He is credited with being a lover of truth and

purity, honorable and contented with frugal living; he was wary and at the same time determined; an able councillor, ingenious in working out the details of a plan, he was yet most sure in accomplishment. Edward was by instinct a legislator, and equally instinctive was his love of arbitrary power. Yet his wisdom kept him short of tyranny and showed him that the fittest means of conserving his own advantage was to allow Parliament reasonable leeway and scrupulously to regard the forms of its enactments. Edward was, however, capable of utilizing the letter of the law to the prejudice of its spirit. And therein lay the chief defect in his generally ascribed character of perfect monarch; he was not above using the law to contravene the purposes for which the law itself was designed.

Representation, which had "ripened in the hand of Simon de Montfort," Edward I made the common fruit of the people. Edward had the conception that the nation, if it be strong enough to live in the face of dangers, must act as the united backing of a strong king. The relation, as he intended it, between king and people is reciprocal; the strength of the

one is the strength of the other, and neither must predominate. That was precisely the relation which such a Parliament as that called by Edward I in 1295, was capable of bringing about; in it each of the three estates had an essential share in the carrying on of the government.

The early part of his reign is of importance secondary to that of the decade ending with 1297. But an understanding of the supremely important crisis which brought about the Confirmation of the Charters is only to be built upon a knowledge of the various events which preceded it.

Before Edward returned from Palestine, his regents summoned to a Parliament held at Hilarytide 1273, not only prelates and barons, but also four knights from each shire and four citizens from each city.<sup>1</sup> The purpose of the convention was the taking of the oath of allegiance to the new king, and the call was prompted doubtlessly by the need of having the whole nation held loyal to the absent and still uncrowned Edward. Here was another instance of the growing

<sup>1</sup> *Ann. Winton.* a. 1273, 113; Stubbs, *Sel. Chart.* 429.



appreciation of the usefulness of the commons.

Edward's  
first Par-  
liament,  
1275, and  
the Stat-  
ute of  
West-  
minster

There was no taxation in the reign of Edward I, except as the clergy taxed the people for the prosecution of the crusade, until Edward called his first Parliament on the 22d April, 1275, at Westminster. The composition of the assemblage is uncertain; the implication of the Chronicler is that it was a Parliament of magnates,<sup>1</sup> but the introductory clause of the Statute of Westminster has it otherwise.<sup>2</sup> "These be the Acts of King Edward . . ." it says, "by his council and by the assent of archbishops, bishops, abbots, priors, earls, barons and the community of the realm being thither assembled." The Statute of Westminster, which was composed of some fifty-one articles, included a provision for regulating the feudal aids which were required upon the knighting of the lord's son or on the event of the marriage of his daughter. Twenty shillings on the knight's fee and twenty shillings from each parcel of land held in socage yielding twenty

<sup>1</sup> *Ann. Winton.* a. 1275, 119; Stubbs, *Sel. Chart.* 430.

<sup>2</sup> Stubbs, *Sel. Chart.* 450.

pounds annually, were to be the maximum rates thereafter.

The great advantages gained by the nation under the Statute of Westminster were not won without a price. The same Parliament made a grant of a custom on wool, woolfells, and leather.<sup>1</sup> The parties to the grant were essentially the same as those who registered their assent in the preamble of the statute; there was, however, this singular difference, that it was done "at the instance and request of the merchants." The amount levied was "a half-mark from each sack of wool, and a half-mark from each three hundred woolfells, which make a sack, and one mark from each last of leather, exported from the realm of England," etc.

A custom  
on wool

<sup>1</sup> " . . . archiepiscopi, episcopi, et alii praelati regni Angliæ ac comites, barones, et nos (William, Earl of Pembroke) et communitate ejusdem regni ad instantiam et rogatum mercatorum pluribus de causis unanimiter concesserimus magnifico principi et domino nostro carissimo domino Edwardo Dei gratia regi Angliæ illustri, pro nobis et hæredibus nostris, dimidiam marcam de quolibet sacco lanæ et dimidiam marcam pro singulis trescentis pellibus lanutis quæ faciunt unum saccum, et unam marcam de quolibet lesta coriorum, exeuntibus regnum Angliæ. . . ." Stubbs, *Sel. Chart.* 451; Adams and Stephens, *Sel. Doc.* 69, translation.

The importance, both in a forward view and in retrospect of this grant of a wool custom, is very great. Parliament in granting this custom assumed the power of assenting to a tax which previously had been considered within the peculiar province of the king. It made a definite statement of what was to be taken subsequently as the legal rate of duty chargeable upon exports of wool. The rate, which since the beginning of the century had been agreed upon between royal officers and merchants as their reasonable charge was this half mark (6s. 8d.) on each sack of wool weighing 364 pounds, or on the estimated equivalent of a sack, 300 woolfells, and a mark upon each last (or load) of leather.<sup>1</sup> Exactions above this rate were known as *mala tolta*, the evil tolls, and the phrase had been shortened to the single word *maletolt*. The forty-first chapter of Magna Carta had promised to all merchants freedom "from all evil tolls," though it continued the "ancient and right customs." Apparently, however, Henry III with respect to this clause as in many another similar in-

<sup>1</sup> See 1 Hubert Hall, *Customs Revenue of England*, 65-68; 2, 117-118; Medley, *Eng. Const. Hist.* 517-518.

stance, did not deem himself bound to adhere scrupulously to his promise. The Parliament of Edward I at Westminster in 1275 settled the matter; the "great and ancient custom" on wool was legally determined, and thereafter a larger exaction would be regarded as illegal.<sup>1</sup>

<sup>1</sup> Wool, hides and leather formed the bulk of the early exports from England. Wine was the principal import. It was on these articles of merchandise, and such others as the merchants brought in and took out, that duties had been charged since early times. The taxes had become customary and were spoken of as "consuetudines," or customs. The basis for the exaction was the understanding that the merchants, most of them foreigners, should be given protection by the king. The early prisage on wine amounted to one cask from every cargo of from ten to twenty casks, arriving at a port of England. From ships carrying more than twenty casks, two casks were exacted. Sometimes the duty instead of being made in wine was compounded for in money. The amount of the export tax on wool in the beginning is not known. In merchandise of other sorts, the payment amounted to a tenth or a fifteenth of the value of the goods.

Magna Carta abolished illegal exactions on goods retaining only the "ancient and lawful customs" above mentioned. Taxable commodities were wine, wool, and general merchandise. In many instances, in spite of the prohibitions in the Charter, the customs amounted to confiscation. Until the time of Edward I there was unending irregularity in the management of the customs. Merchant strangers, by Cap. 41 of the Great Charter were to have "safe and secure exit from England, and entry to England . . . buying and selling by the ancient and right customs, quit from all evil Tolls."

Edward's  
Second  
Parlia-  
ment, 13th  
October,  
1275

Edward summoned a second Parliament for the 13th October following in a manner which gives ground for the presumption that the presence of the knights of the shire in a parliament designed primarily for the raising of money, was already becoming a custom. The point cannot be better illustrated than by a translation of the writ itself.<sup>1</sup> "Since we have bidden the prelates and magnates of our realm," so it goes, "to be present at our Parliament which we will hold . . . at Westminster, to treat with us both concerning the condition of our realm and of certain of

<sup>1</sup> "Edwardus Dei Gratia Rex Angliæ dominus Hiberniæ et dux Aquitanniæ vicecomiti Kanciæ salutem. Cum prælati et magnatibus regni nostri mandaverimus ut ipsi parlamento nostro, quod apud Westmonasterium in quindena Sancti Michaelis proxime futura tenebimus. Domino concedenti intersint ad tractandum nobiscum tam super statum regni nostri quam super quibusdam negotiis nostris quæ eis exponemus ibidem, et expediens sit quod duo milites de comitatu prædicto de discretioribus et legalioribus militibus ejusdem comitatus intersint eidem parlamento, ex causis prædictis tibi præcipimus quod in pleno comitatu tuo de assensu ejusdem comitatus eligi facias dictos duos milites et eos ad nos usque Westmonasterium pro communitate dicti comitatus venire facias ad dictum diem ad tractandum nobiscum et cum prædictis prælati et magnatibus super negotiis prædictis. Et hoc non omittas. . . ." <sup>2</sup> Stubbs, *Const. Hist. Eng.* 234, note 5.

our business which we will declare to them at the same time, and as it is expedient that two knights from the county above-mentioned be present at the same Parliament from the body of discreet and lawful knights of the same county, by the reasons above-stated we command you that you cause to be elected in your full county-court (in pleno comitatu) by the assent of the same county, the said two knights and that you cause them to come to us at Westminster in behalf of the community of the said county on the said day, to treat with us and with the above-mentioned prelates and magnates about the above-stated business. And omit none of it."

Thus we observe that it was "expedient" for the lesser landholders to be present in a Parliament which was called for the purpose of securing the grant of a tax. The tone of the writ is most matter-of-fact, as though the knights of the shire were considered scarcely less usual attendants at Edward's parliaments than the magnates themselves. That the king "declared unto them certain of his business" and that they proved amenable is exhibited by the fact that this Parlia-

Attendance  
of Knights  
of the Shire  
"expedi-  
ent" for  
uses of  
taxation

ment granted a fifteenth of temporal movables.<sup>1</sup>

The next event of importance witnessed the extension of the function of levying taxes to the citizens and burgesses. By the fall of 1282 Edward found himself in financial difficulties. Since the Parliaments of 1275 taxation had been very light. He had received in 1279 a scutage of forty shillings on the fee on account of the Welsh war,<sup>2</sup> and he received assistance from the clergy in 1279 and the years following. Beside the income resulting from these grants, he still had his custom on wool, but it was far from sufficient for his needs, and he had been obliged to have recourse to the rigid enforcement of statutes, rigorous application of writs, notably that of *Quo Warranto*,<sup>3</sup> and in 1278 he had adopted the expedient, in after time to be exercised frequently, of compelling all who

<sup>1</sup> 1 *Rotuli Parliamentorum*, 224.

<sup>2</sup> *Ann.* T. Wykes, 274; Stubbs, *Sel. Chart.* 431.

<sup>3</sup> The statute of Gloucester, passed in 1278, provided for the regulation of territorial franchises. In accordance with it, the itinerant justices were to inquire by what warrant certain franchises were held, and the writ "*quo warranto*" was issued in each case. Stubbs, 2 *Const. Hist. Eng.* 114-115.

possessed £20 a year in lands to become knights, and to pay the fee incidental to the attainment of knighthood.<sup>1</sup>

The Welsh war came on again in 1282 and added to the king's embarrassment. He was unwilling to call a Parliament and took the less public but also less efficient means of negotiating with individuals for money with which to carry on the war. He sent royal commissioners abroad through the country who should plead the king's necessity and accept grants from sheriffs, bailiffs, and mayors as representing their respective communities, and also from individual citizens and countrymen upon their own behalf.<sup>2</sup> These private offerings tided the king over his immediate necessities. Late in the fall, however, he found his position untenable and was forced either to call a Parliament or to adopt some effective substitute. Being at Rhuddlan, in the center of hostile country, and having most of his barons with him, he was obliged to formulate a new plan for the attainment of

Provincial  
assemblies  
at North-  
ampton  
and York,  
1283

<sup>1</sup> Writ for distraint of knighthood. 1 Stubbs, *Sel. Chart.* 457.

<sup>2</sup> Letter of credence for a royal commissioner to raise an aid. Stubbs, *Sel. Chart.* 464.



his end or else to adopt existing machinery to his purposes. He sent out writs on the 24th November bidding the sheriffs send representatives to two provincial assemblies at Northampton or York, as the case might be, for the 20th January following. The members were to include all those who were capable of bearing arms, and who held lands to the annual value of £20, not already with the army; four knights from each county having full power for the community of the county; two men from each city, borough, and market town, having like power for the community of the same, "to hear and to do those things which we on our part will cause to be shown to them."<sup>1</sup> The clergy also were summoned; the bishops were to bring their archdeacons, the heads of religious houses, and the proctors of the cathedral clergy.

They make  
grants of  
taxes

These irregular assemblies convened as they were bidden, the clergy and laity meeting separately. The knights and burgesses at Northampton made a grant of a thirtieth on condition that the barons do likewise;<sup>2</sup> the

<sup>1</sup> Stubbs, *Sel. Chart.* 465-468.

<sup>2</sup> *Ann. Dunst.* 294, in Stubbs, *Sel. Chart.* 433.

clergy refused to make any offering at all because the parochial clergy were not represented. At York, the knights and burgesses made the grant of a thirtieth without condition; the clergy made promises which they did not keep. When the collection was made, allowances were admitted for the sums which had been contributed upon private negotiation. Notwithstanding the irregular character of these Councils in view of later developments, — irregular in that the parochial clergy and the baronage were not represented and that the meeting was not in a single general assembly, — they marked the "transition from local to that of central assent to taxation."<sup>1</sup> The king had discovered that it was easier to attain his end through a Parliament than by private solicitation, — that is, if he were to wait for the assent of the people at all. It was a step on the road; Edward had decided in favor of summoning a Parliament as against asking for money from individuals. It was more profitable.

There is no further record of taxation until 1289, save that of a grant in 1288 from Nich-

<sup>1</sup> Stubbs, *Sel. Chart.* 460.



Parlia-  
ments of  
1289 and  
1290

olas IV, of an ecclesiastical tenth for six years in reward of Edward's vow to undertake a crusade,<sup>1</sup> and a scutage in 1285 on account of the Welsh campaign of three years before.<sup>2</sup> Edward's expenses, on the other hand, were heavy. The prosecution of his foreign interests in Gascony, where he had been in person for three years, was a heavy drain upon the exchequer. At the Parliament of 1289 the treasurer, John Kirkby, laid the royal needs before the barons, who responded that they would not pay "until they should see the king's face in his own land."<sup>3</sup> Kirkby began to tallage the cities and boroughs and the other demesne lands of the king, "imposing upon them an intolerable sum of money." It is probable that this as well as other royal tallages applied only to such of the cities and boroughs as were included in the royal demesne. As a matter of fact, most of the boroughs were included in the demesnes of the king.<sup>4</sup>

<sup>1</sup> 2 Stubbs, *Const. Hist. Eng.* 124, and authorities there cited.

<sup>2</sup> *Cont. Flor. Wig.* 235. The scutage was for forty shillings on the knights fee.

<sup>3</sup> *Ann. Osney*, 316, in Stubbs, *Sel. Chart.*, 434-435.

<sup>4</sup> 2 Stubbs, *Const. Hist. Eng.* 545.

The following spring Edward married his younger daughter to the Earl of Gloucester and besought Parliament for an aid "pur fille marier," though technically this was to be paid only in the case of the marriage of the king's eldest daughter. Parliament proved well-disposed, however, and granted forty shillings on the fee. The manner in which the barons and bishops who composed this session of Parliament made their offering is noteworthy, in view of the fact that the tenants-in-chief intimated that they could speak only for themselves. They made their own grant of an aid and extended it "as far as in them lies," to "the community of the whole kingdom."<sup>1</sup> The barons made special note of the fact that the offering was an advance upon the two marks which had been granted to King Henry, and stipulated that this be not drawn into precedent. As a matter of fact, the tax fell only on the tenants-in-chief (just why can only be conjectured), and the collec-

<sup>1</sup> " . . . magnates et procures tunc in parlamento existentes, pro se et communitate totius regni quantum in ipsis est, concesserunt domino regi. . . " etc. Stubbs, *Sel. Chart.* 477; 1 *Rot. Parl.* 25.

tion was not made until many years afterward.

A second Parliament was held in July. To it Edward summoned two or three elected knights from each shire.<sup>1</sup> The design behind the calling of the Parliament was probably the securing of a grant of a fifteenth of temporal movables, since it develops that such a tax was laid at that session, by clergy and laity alike.<sup>2</sup> Edward made a further demand of a tenth of spiritual revenue, which the clergy granted him on the 2d October following.<sup>3</sup> Apparently these offerings to the king were in payment for his banishment of the Jews, who were hated for their usurious habits and for their religion; the laity sought their expulsion for the former reason and the clergy ostensibly for the latter, but the offence to their pockets doubtless did much to arouse their religious zeal against the Jews.

The interval between 1290 and 1294 does

<sup>1</sup> The boroughs and city of London paid this tax, though they were without special representation. The writ of summons is in Stubbs, *Sel. Chart.* 477.

<sup>2</sup> *Ann. Osney*, 326, and *Ann. Dunst.* 362, in Stubbs, *Sel. Chart.* 435.

<sup>3</sup> *Cont. Flor. Wig.* 243.

not furnish a wealth of material. The royal poverty coexisted with a spirit of restlessness on the borders and in France during the four years, and little was accomplished toward relieving either the one or the other. In 1291 the Pope had complicated Edward's relations with the English clergy by giving him a tenth of spiritual revenue for six years,<sup>1</sup> and the barons holding estates in Wales gave a fifteenth in 1292. Edward also had recourse to distraint of knighthood, which as in 1282 was symptomatic of a straitened treasury.<sup>2</sup>

Edward in June, 1294, held at Westminster a Parliament which was attended by the magnates of England and John Baliol, King of Scotland. The barons determined upon war with France, and proceeded to provide for the outlay necessitated by it, not by a general grant, but with private contributions. John Baliol gave the income from the estates which he held in England for three years, and the other magnates "promised aid according to their abilities."<sup>3</sup> But the supply was far

<sup>1</sup> 1 Rymer, *Foedera*, part 3, 80-81; *Cont. Flor. Wig.* 264.

<sup>2</sup> *Cont. Flor. Wig.* 266.

<sup>3</sup> *Matth. Westmon. Flores*, 421.

Seizure of  
wool, 1294

from being sufficient; Edward was obliged to adopt extraordinary means to meet his obligations. Shortly before the Westminster Council Edward had made a move which later assumed large proportions in the parliamentary eye. He seized all the wool in the country, belonging both to clergy and laymen, and released it the following July at a rate which meant scarcely less than redemption, three to five marks on the sack, and which was greatly in excess of the rate specified in 1275. Edward had a shadow of legal sanction for his act, perhaps the consent of the wool merchants,<sup>1</sup> perhaps an ordinance of his Council.<sup>2</sup>

In any event, he had the great defense of the exigencies of war, a plea which he knew how to make effective. Early in July he seized coined money which had been deposited in the cathedrals and religious houses for safe-keeping, and had it removed to his treasury in London. "And he got much money which he never after restored," says the Chronicler.<sup>3</sup>

Edward summoned for the 21st September

<sup>1</sup> So Bishop Stubbs conjectures, *2 Const. Hist. Eng.* 131.

<sup>2</sup> Barth. Cotton, *De Rege Edwardo I*, 246.

<sup>3</sup> *2 Walt. de Hemingb.* 53-54.

of the same year a general convocation of the clergy to London. Beside the usual body of prelates, there were in attendance elected representatives of the parochial and cathedral clergy. Edward demanded half the spiritual revenue, to the great distress of the ecclesiastics. They demurred, and urged a postponement which Edward granted them. Upon their reassembling, the king reiterated his demand upon pain of outlawry in case of nonfulfillment. The Dean of St. Paul's was so greatly terrified that he died of fright, and then the grant was made.<sup>1</sup> This assembly takes its importance from the fact that here was a tacit recognition of the need of clerical consent through representatives to taxation.

Clergy  
grant  
money un-  
der pain of  
outlawry,  
1294

On the 8th October, Edward addressed writs to the sheriffs ordering the election of two knights in each shire who were to come to Westminster on the 12th of the following month. They were to be of "full power for themselves and the entire community of the county aforesaid, to consult and consent for themselves and that community, to those things which the earls, barons, and chief men shall

Knights of  
the Shire  
meet  
separately

<sup>1</sup> *2 Walt. de Hemingb.* 55-57.

have agreed upon and ordained."<sup>1</sup> The next day Edward sent out supplementary writs summoning two knights from each shire in addition to those previously called. There was no representation from the cities and boroughs. The laity proved more tractable than the clergy had been at their assembly in September, and readily accomplished Edward's purpose. It is probable that their deliberations were not delayed, for on the same day with the assembling of the Parliament, was dated the appointment of the commissioners of collection. The laity of the baronage and the shires gave a tenth of all movables.<sup>2</sup> A sixth of movables was drawn from the towns by separate negotiation, or perhaps by way of tallage.<sup>3</sup>

The step to the events and attainments of

<sup>1</sup> Stubbs, *Sel. Chart.* 479-482.

<sup>2</sup> Barth. Cotton, 254 et. seq.; <sup>2</sup> Walt. de Hemingb. 57.

<sup>3</sup> The character of this tax, indeed its very existence, is questioned. Matthew of Westminster (422), mentions a tax on the towns of "the sixth penny." It may have been either a tallage or a tax by special negotiation, or it may have been granted by the shire representatives on the theory that the towns were included within their shires, though this is most unlikely. See Taswell-Langmead, *Eng. Const. Hist.* 199; <sup>2</sup> Stubbs, *Const. Hist. Eng.* 132; Stubbs, *Sel. Chart.* 480, 483-484.

the next year was not long, but it was of surpassing importance. The year 1295 is painted in scarlet on the canvas of constitutional progress in England. It witnessed the Model Parliament in the composition of which a principle was applied which must ever stand as the basic theory of popular legislative institutions; indeed, without it, there can be no lawmaking by the nation at all, and when the taxing power be included amongst the lawmaking functions, unless strict adherence be given to this principle, the taxpayer can never be assured of a voice in the laying of taxes. Edward I, furnishing the pattern, summoned the Model Parliament on the expressed theory that "what touches all, by all should be approved." Here was the first authentic instance of a perfect and complete representation of the three estates in a national legislative body giving its assent to taxation.

Events  
leading up  
to the  
Model  
Parliament,  
1295

The events immediately prior to the calling of the Parliament are of interest. Trouble was on with the Welsh, and a Scotch war began before the other was over. The French king had transgressed Edward's Gascon possessions and his sailors had landed at Dover,



putting a convent and some houses to the torch. Edward's arms seemed doomed to universal failure; nowhere were his prospects bright. By no means the least serious feature of his position was an empty treasury. With the hope of devising the means of changing his fortune, he summoned to Westminster for the 1st August a Parliament composed of the barons and prelates of the realm. The session took place on the 15th August. The bulk of the debate was upon the proposal for papal mediation between England and France, and no attempt was made to raise money. But it was doubtlessly decided to ask for a grant at the meeting of Parliament intended for the following autumn.<sup>1</sup>

"What  
affects all,  
by all  
should be  
approved"

On the four days from the 30th September to the 3d October, Edward addressed writs to the clergy, the barons, and the sheriffs, the last of whom were to send up the representatives of the counties and the boroughs. In the writs to the clergy, by way of preamble Edward said, "As a most just law, established by the careful providence of sacred princes, exhorts and decrees that what affects all, by

<sup>1</sup> Stubbs, *Sel. Chart.* 482.

all should be approved, so also, very evidently should common danger be met by means provided in common."<sup>1</sup> This legal maxim, which had previously held a place only in the minds of students of the law, was by this act become a most important element in the governmental practice of England.<sup>2</sup> The writs provided not only for the attendance of the prelates, but also for the sending up of representatives of the lower clergy, — the archdeacons and deans in person, a suitable proctor for the chapters, and two others for the parochial clergy of each diocese. All were to have "full and sufficient power . . . to consider, ordain, and provide."

<sup>1</sup> "Sicut lex justissima, provida circumspectione sacrorum principum stabilita, hortatur et statuit ut quod omnes tangit ab omnibus approbetur, sic et nimis evidenter ut communibus periculis per remedia provisa communiter obvietur. . . . Præmunientes priorem et capitulum ecclesiæ vestræ, archidiacones, totumque clerum vestræ diocesis, facientes quod iidem prior et archidiaconi in propriis personis suis, et dictum capitulum per unum, idemque clerus per duos procuratores idoneos, plenam et sufficientem potestatem ab ipsis capitulo et clero habentes . . . ad tractandum, ordinandum et faciendum. . . ." Stubbs, *Sel. Chart.* 484. Translation in Adams and Stephens, *Sel. Doc.* 82.

<sup>2</sup> The phrase occurs in the codes of Justinian. Cod. V, lix, 5; Taswell-Langmead, *Eng. Const. Hist.* 200, note 1.



The writs to the barons<sup>1</sup> were similar in tenor to the usual issuance upon such occasions. To the sheriffs it was "strictly commanded" that they "cause to be elected without delay" and sent up to Westminster "two knights from the aforesaid county, two citizens from each city in the same county, and two burgesses from each borough, of those who are especially discreet and capable of acting." All were to have "full and sufficient power for themselves and for the community of the aforesaid county . . . and the communities of the aforesaid cities and boroughs separately, then and there for doing what shall then be ordained according to the common counsel in the premises; so that the aforesaid business shall not remain unfinished in any way for defect of this power."<sup>2</sup>

<sup>1</sup> Stubbs, *Sel. Chart.* 485. Translation Adams and Stephens, *Sel. Doc.* 83.

<sup>2</sup> ". . . Tibi præcipimus firmiter injungentes quod de comitatu prædicto duos milites et de qualibet civitate ejusdem comitatus duos cives, et de quolibet burgo duos burgenses, de discretioribus et ad laboradum potentioribus, sine dilatione eligi, et eos ad nos ad prædictos diem et locum venire facias: ita quod dicti milites plenam et sufficientem potestatem pro se et communitate comitatus prædicti, et dicti cives et burgenses pro se et communitate civitatum et

The Parliament, since known as the Model Parliament, assembled the 27th November, 1295, in accordance with the summons of the king. Each of the estates met by itself, and each made its grant to the king independently of the others.<sup>1</sup> The barons and the knights of the shire gave Edward an eleventh of their movables, the clergy a tenth, and the burgesses and citizens a seventh.<sup>2</sup> Here was the perfect form for the laying of taxes. In 1283 the provincial councils at Northampton and at York had suggested the composition of the Model Parliament, but the foreshadowed form was far from perfect. In 1295 the question was fully answered as to how the people

The Model  
Parliament, 27th  
Nov., 1295

burgorum prædictorum divisim ab ipsis tunc ibidem habeant, ad faciendum quod tunc de communi consilio ordinabitur in præmissis; ita quod pro defectu hujusmodi potestatis negotium prædictum infectum non remaneant quoquo modo." Stubbs, *Sel. Chart.* 486. Translation Adams and Stephens, *Sel. Doc.* 83.

<sup>1</sup> In the fourteenth century the clergy ceased to act in Parliament. They preferred to make their grants in separate convocations, and continued to do so until 1664 when they were merged with the other two estates. From the reign of Henry VIII, the grants of the clergy were subject to parliamentary confirmation. Taswell-Langmead, *Eng. Const. Hist.* 201-202.

<sup>2</sup> Barth. Cotton, 299.

should assent to taxation, in case their assent should be asked. The Model Parliament furnished the perfect mechanism; the question was still in the air, however, as to whether this mechanism should be the sole instrument by which the laying of taxation should be performed.

Similar  
composition  
at Par-  
liament of  
1296

Events, however, were tripping one another up in their haste to bring forward a suitable answer. The Parliament of 1296, which met at Bury St. Edmund's on the 3d November, clinched a precedent which should have its weight in making the reply. Its constitution was precisely the same as in 1295; the barons and knights gave a twelfth of their movables, and the citizens and burghers an eighth.

The clergy, however, held off. According to the understanding reached the previous December when Edward accepted from them a tenth in lieu of a larger grant, they were to meet a demand with a further contribution of like amount,<sup>1</sup> unless peace be declared in the interval. In consequence, Edward was scarcely ready to accept the apology of Archbishop Winchelsey; the archbishop declared that

<sup>1</sup> Barth. Cotton, 299.

should the clergy acquiesce, the papal will expressed in the recently published bull "Clericis laicos"<sup>1</sup> would be contravened, and that therefore no grant would be forthcoming. He would give his final answer after meeting the clergy of his province at St. Paul's early in January, 1297. When at last his reply was presented, it was in tenor different from that given in November; the Pope's will was clear and it must hold. Edward moved swiftly. Remembering the satisfactory effect of his threat of outlawry in 1294, he immediately placed the clergy beyond the royal protection.<sup>2</sup> Some of the clergy won back the favor of the king by making individual contributions to the royal treasury, an evasion of the terms of the papal bull which was quite acceptable to Edward. On the 12th February, the king, weary of waiting

Edward  
puts the  
clergy in  
outlawry

<sup>1</sup> The bull "Clericis laicos," published 24th February, 1296, by Boniface VIII, was levelled at the taxation of the clergy by temporal powers; it prohibited the clergy from paying and the secular powers from receiving contributions by way of taxes, under pain of excommunication. The bull is given in 1 Rymer, *Foedera*, part 3, p. 156, and in Adams and Stephens, *Sel. Doc.* 84, in translation.

<sup>2</sup> Barth. Cotton, 315, 317-319.

for a favorable movement from Archbishop Winchelsey, ordered the seizure of the lay fees of the clergy in the see of Canterbury, whereat the archbishop brought forward his weapon of excommunication. Thus did Edward find disposed against himself and the royal cause the powerful body of English churchmen, at a moment when their adherence would have been of vast advantage.

The Scots had been put down during the year 1296 and Baliol removed forever from Scotch territory. The momentary peace on the borders made Edward feverish to avenge himself upon Philip of France, who was making free with Gascony. The trouble with the church had served to delay preparations which might speedily have reached completion upon the granting of money at the November Parliament, and Edward was in no temper to brook further interference. He had formulated a plan of campaign against the French which provided not only for an expedition into Gascony in reinforcement of the army already there, but for the landing of a powerful force in Flanders. The latter he intended to lead in person, but the

conduct of the Gascon army he hoped to delegate to his barons. With the intention of securing their consent he called a meeting of the baronage at Salisbury for the 24th February. Neither the clergy nor the knights and burgesses were present. The barons held freshly in mind the recent opposition of the clergy and they were in no mood to forego any tightening of the royal bonds upon themselves.

Struggle  
with the  
barons over  
service in  
Gascony

Edward urged them to go into Gascony, and straightway one by one they began to make excuses. To the king, burning to defend the English possessions abroad and already overwrought by the long struggle with the churchmen, the refusal savored of disloyalty, and in requital he threatened them with forfeiture of their lands. The two great earls Roger Bigod, Earl of Norfolk and Marshal of England, and Humfrey Bohun of Hereford, the Constable, were quite as backward in meeting the king's wishes and no more favorably received.

"With you, O King," said Earl Roger, "I will gladly go: as belongs to me by hereditary right, I will go in the front of the host before your face."

"But without me," Edward assured, "you will go with the rest."

"Without you, O King," Earl Roger declared, "I am neither bound to go, nor will I."

"By God, Earl," swore the king, "You shall either go or hang!"

"By the same oath, O King, I will neither go nor hang!"<sup>1</sup>

In these words and on these grounds the Earl Marshal of England refused to undertake foreign service, and the Council scattered. Edward, not to be undone, straightway set about preparing for an expedition independently of his baronage. He laid hands upon all the wool and woolfells of the country, that being the commodity most readily convertible into money, and ordered that it be carried to the seaports. In default of obedience, this wool passed to the crown by confiscation. Every merchant who was the possessor of more than five sacks received tallies from the royal commissioners which might or might not secure payment in the future.<sup>2</sup> Those who had less than five sacks were

Seizure  
of wool

<sup>1</sup> Walt. de Hemingb., 121.

<sup>2</sup> Matt. Westm., 430, in Stubbs, *Sel. Chart.* 441.

allowed to retain it upon paying a toll of forty shillings on the sack. Simultaneously, Edward directed at every county a demand for 2000 quarters of wheat, a like quantity of oats, and a supply of beef and pork. Whereas in 1294 Edward had been able to plead the consent of the merchants to his toll on wool, in the present instance no plea was possible save the exigencies of the case, and that was no defense at law. So Edward, by stress of circumstance, was obliged to forfeit the support of a growing and exceedingly important body of his people.

The king determined to make a final attempt to win the barons from their contumacy. For the 7th July, he summoned the whole fighting force of the kingdom to London; the assembly was to include all who held lands to the annual value of £20, no matter what the tenure.<sup>1</sup> From these a demand for foreign service was obviously unconstitutional, since they were not immediately bound to him. Coupled with the weakness of the king's position was the continued opposition of Bohun and Bigod; they and a large number of

<sup>1</sup> 1 Rymer, *Foedera*, part 3, 179.



the other barons had surrounded themselves with a force of knights to the number of fifteen hundred, and, though they were not as yet openly hostile, they had been able to shield their lands from the royal exactions of wool and wheat.<sup>1</sup> When Edward ordered the Marshal and the Constable to perform their offices, they refused.

Thus it was that Edward found himself pitted not only against the King of France, but also against the church, the merchant class, and his own baronage. Of these the church showed itself most amenable to placation. Edward restored to Archbishop Winchelsey the lands of the see of Canterbury which he had confiscated.<sup>2</sup> To strengthen further a position which at best was exceedingly weak, Edward made a dramatic attempt to win over to his cause the support of the people.

On the 14th July, a week after his unsuccessful council with the barons, he appeared

<sup>1</sup> 2 Walt. de Hemingb., 121, 122.

<sup>2</sup> Matt. Westm., 430, in Stubbs, *Sel. Chart.* 441. The restitution of Winchelsey's baronies occurred after this scene 19th July, according to *Chron. Cant. Ang. Sac.* noted in 2 Stubbs, *Const. Hist. Eng.* 141.

on a wooden stage erected in front of the great hall at Westminster and addressed the populace. He asked that they forgive the harshness of his acts, but reminded them that what money they had given him had gone to subdue enemies plotting to drive the English tongue from the earth.

"Behold," he cried, his voice choked with tears, "I am going to expose myself to danger for your sakes; I pray you, if I return, receive me as you have me now, and I will restore to you all that has been taken. But if I return not," and at this he brought forward his son, the young Edward, who was standing near him on the platform, "crown my son as your king."<sup>1</sup> The people threw up their caps and promised fealty to the king. The archbishop declared his resolve to be faithful.

Edward's  
appeal to  
the people

But neither the reconciliation with the church nor the adherence of the London populace brought him money, and in so far as advantage was reckoned in terms of shillings, Edward was no better off than before his council of the 7th July. He had recourse to

<sup>1</sup> Matt. Westm., 430, in Stubbs, *Sel. Chart.* 441, 442.



His  
financial  
expedients

the old expedient of individual negotiation. He consulted in a private audience the chief men still remaining of those who had gathered for the military levy; he assumed their ability to grant taxes upon the analogy of a Parliament, an assumption scarcely reasonable in view of their depleted numbers. Notwithstanding the fact that Earls Roger and Humfrey remained obdurate, such of the barons and knights as were there granted an eighth and the citizens and burghers a fifth, on the somewhat hazy understanding that the king should confirm the charters. Edward on the 30th July gave orders for the collection of the tax and issued writs for the seizure of 8000 sacks of wool, for which the merchants received tallies as a record of credit at the exchequer.<sup>1</sup>

Then he went down to the coast and prepared to embark. Putting great faith in the continued support of the people, he addressed to them an eloquent plea for loyalty to the crown as against the barons. He spoke of the exactions of money to which they had been subjected, and declared that, severe as was

<sup>1</sup> Barth. Cotton, 338; 1 Rot. Parl. 239.

the pain which had been inflicted upon the people, equally great was his own distress; that the money had been spent for "le commun profit du reaume, pur son pople honyr et destruyre."<sup>1</sup> The barons, on the other hand, immediately came forward with a list of grievances which they presented to the king, complaining, amongst other things, of the aids, tallages, and prises which the king had lately levied. So afflicted were they with "divers tallages, aids, and prises," such as those upon corn, oats, malt, wool, hides, oxen, kine, and salt meat, that it would have been impossible for them to equip for any foreign expedition. More than that, they could make no grant of an aid, because of their great poverty following the exaction of the afore-said tallages and prises; indeed, there were "many who had no sustenance, and who could not till their lands." The tax on wool was much too heavy, no less than 40s. on the sack; wool comprised half the wealth of the nation, and the tax was equivalent to a fifth part of the value of the whole land. Magna Carta and the Charter of the Forest were

The  
barons'  
grievances

<sup>1</sup> Barth. Cotton, 334.

both disregarded, and many acts were done in defiance of them.<sup>1</sup>

Edward  
embarks  
for  
Flanders

Edward did not return a definite answer; the call to war sounded too loudly. Before he embarked he issued orders for the collection of a third of clerical temporalities in a most peremptory manner; on the 10th August the clergy had expressed hopes of being able to gain the Pope's permission to disregard the provisions of "Clericis laicos," but of late they had showed a disposition to stand with the baronage. Finally, on the 22d August, Edward succeeded in getting up sail and made for Flanders.

But he could not escape the issue. Almost before England had sunk below his horizon Bohun and Bigod were at the Exchequer loudly protesting against the collection of the aid which had been irregularly granted to Edward five weeks previously. They went to the extreme of forbidding the Barons of the Exchequer to proceed with their work of taking the tax until Edward should make formal confirmation of the Charters.<sup>2</sup> The

<sup>1</sup> W. Rishanger, *Chron.* 175, in Stubbs, *Sel. Chart.* 442, 443.

<sup>2</sup> Matt. Westm., 430; W. Rishanger, 178. Both in Stubbs, *Sel. Chart.* 444.

Londoners forgot their loyalty to the king, and swore by the earls. The young Prince Edward, afterward king, whom Edward had left as his regent, tried to throw a dam across the swelling river by promising that the eighth should not be taken into precedent.<sup>1</sup> This was published in proclamation on the 28th August, but it availed nothing. The fifth which had been asserted as owing from the cities and boroughs was lost sight of.

Edward, two days before his departure for Flanders had sent out summonses to a number of barons and knights to meet his son on the 8th September at Rochester. But before that date was reached, the necessity for a full Council was apparent. Accordingly, on the 8th September, messages were sent out which called most of the barons of the royal party; on the 9th, Archbishop Winchelsea, the Constable and the Marshal, were summoned,<sup>2</sup> and on the 15th letters were addressed to the sheriffs ordering an election of knights of the shire.<sup>3</sup> No representatives of the cities

<sup>1</sup> 1 Rymer, *Foedera*, part 3, 189.

<sup>2</sup> Barth. Cotton, 336.

<sup>3</sup> 1 Rymer, *Foedera*, part 3, 190.

and boroughs or of the inferior clergy were called.

Principle  
that grants  
must await  
redress of  
grievances

The Parliament was summoned for the octaves of St. Michael (the 6th October), at London. The great nobles, coming with their train of armed soldiers, both foot and horse, had command of the situation.<sup>1</sup> They demanded that the young regent confirm Magna Carta and the Charter of the Forest, together with certain supplementary articles. Prince Edward, acting on the advice of his councillors, agreed, and straightway on the 10th October, sent the Charters and the new provisions to his father in Flanders for final confirmation. Nor was that enough. "The earls," says Bishop Stubbs, "took advantage of their strength to force on the government the principle, which both before and long after was a subject of contention among English statesmen, that grievances must be redressed before supplies are granted."<sup>2</sup> The irregular and much disputed grant of an eighth they declared null, and in place of it they substituted a ninth from such of the laity

<sup>1</sup> 2 Walt. de Hemingb. 147, 148.

<sup>2</sup> 2 Stubbs, *Const. Hist. Eng.* 147.

as were in attendance, a grant in which the towns subsequently were included. Here was one of the opening battles in the war which was to decide whether or not Parliament, sitting guardian of the public purse, could by reason of that guardianship, establish its control over the executive as well as the legislative acts of the nation.

The articles found the king at Ghent on the 5th November and he set his name both to the Charters and to the provisions supplementary to them. The difficulties with the barons thus concluded, it was not long before the clerical atmosphere cleared also. On the 20th November, the clergy, in response to a suggestion from Archbishop Winchelsey, evading the letter of "Clericis laicos," initiated a tax upon themselves, a fifth from the northern province, and a tenth from the southern.<sup>1</sup> The purpose of the levy was the defense of the realm against the Scots who had again invaded the north.<sup>2</sup>

Confirma-  
tion of the  
Charters

<sup>1</sup> "Clericis laicos," it will be remembered, prohibited compliance by the clergy with demands by the crown for taxation. It is evident that a gift by the clergy for the defense of the realm, provided it be not a compliant, but an initial act, was not a contravention of the bull.

<sup>2</sup> Barth. Cotton, 339.

Edward I, when he signed "Confirmatio Cartarum," in an inconclusive way handed over to Parliament the right to consent to all taxation before it be levied; in other words, hereafter Parliament had grounds upon which it could contest arbitrary exactions of the crown. That the grounds for objection were not absolute and that Edward left a loophole by which he could escape will appear upon a consideration of the articles themselves.

The first four chapters of Confirmatio Cartarum have to do with the bare reissuance of the Charter of Henry III, and penalties for their infraction. The fifth is more to the point; it provides that the recent exactions shall not be taken into precedent for future taxation.<sup>1</sup> The sixth chapter brings the issue

<sup>1</sup> "5. And for so much as divers people of our realm are in fear that the aids and tasks which they have given to us beforetime towards our wars and other business, of their own grant and good will, howsoever they were made, might turn to be a bondage to them and their heirs, because they might be at another time found in the rolls, and so likewise the prises taken throughout the realm by our ministers in our name; we have granted for us and our heirs, that we shall not draw such aids, tasks, nor prises into a custom, for anything that hath been done heretofore, or that may be found by roll or in any other manner." Adams and Stephens,

directly before us and exhibits also the loophole by which the king might find his escape from it, if he should have the inclination and the power to do so. It says that "for no business from henceforth we shall take of our realm such manner of aids, tasks, nor prises, but by the common assent of all the realm, and for the common profit thereof, saving the ancient aids and prises due and accustomed."<sup>1</sup>

The tax provisions of Confirmatio Cartarum

*Sel. Doc. 87. Stubbs, Sel. Chart. 495 (French text) and 496 (translation). Original in 2 Walt. de Hemingb. 149.*

<sup>1</sup> "6. Moreover we have granted for us and our heirs as well to archbishops, bishops, abbots, priors, and other folk of holy Church, as also to earls, barons, and to all the commonalty of the land, that for no business from henceforth we shall take of our realm such manner of aids, tasks, nor prises, but by the common assent of all the realm, and for the common profit thereof, saving the ancient aids and prises due and accustomed.

"And for so much as the mere part of the commonalty of the realm find themselves sore grieved with the maletolt of wools, that is to wit, a toll of forty shillings for every sack of wool, and have made petition to us to release the same; we at their requests have clearly released it, and have granted that we will not take such thing nor any other without their common assent and good will; saving to us and our heirs the custom of wools, skins, and leather, granted before by the commonalty aforesaid. In witness of which things we have caused these our letters to be made patents." Adams and Stephens, *Sel. Doc. 87; Stubbs, Sel. Chart. 495 (French text), and 496 (translation).*



The chapter going on in reference to the evil custom of forty shillings on every sack of wool, commonly known as the "maletolt," says, "We . . . have granted that we will not take such thing nor any other without their common assent and good will; saving to us and our heirs the custom of wools, skins, and leather, granted before by the commonalty aforesaid."

The chapters are explicit. Of the two, the sixth is of far greater consequence, both to those seeking in *Confirmatio Cartarum* a complete statement of the right of Parliament to exercise exclusive control over taxation and to those looking for a vindication of the royal prerogative. The fifth can be taken for what it was, a mere promise on the part of the king not to bring forward past wrongs in defense of future ills, — a promise, the like of which was seldom of much practical avail. The sixth, however, were it not for two clauses saving to the king "the ancient aids and prises, due and accustomed," and the "custom of wools, skins, and leather granted before," would have established a tolerably broad basis for the theory that royal control over taxation underwent its legal death in 1297.

The facts, however, that the king could still retain his right to levy ancient aids and prises, provided they were what his ancestors were wont to exact; that he could claim unquestioned control over the wool-tax to the extent of half a mark on the sack; and that nothing was said at all about his right to tallage his demesne and the city of London, form a sound backing for the contention that not only was the royal power over taxation not dead, but that it was still vigorous and capable of much future activity. One might rightfully deduce, also, at least in so far as an explicit reading of the text can lead one to conclusions, that within certain circumscribed limits, the royal prerogative would be unquestioned.

By implication, however, it is possible to read into *Confirmatio Cartarum* a different significance than a bald consideration of its contents allows. The mere fact that the nation had taken a stand on the matter of taxation marks the year 1297 as of profound importance; the fact that the stand was not conclusive, that it did not represent the fullest advance possible at the time, is not to be wondered at. Furthermore, the subsequent



Parliaments saw to it that the king observed more than the mere letter of the law, notwithstanding Edward's evident aptitude for only that. The case in this respect was not unlike the observance of the omitted chapters of Magna Carta; though the written form of them had been misunderstood and unappreciated, yet by the natural forces at play between king and Councils, the spirit of them survived.

*De tallagio  
non con-  
cedendo*

The so-called Statute *De tallagio non concedendo*, if it could be taken at its face value, provided exactly those restraints upon the royal power wherein Confirmatio Cartarum was wanting. It appears in the Chronicle of Walter of Hemingburgh immediately after the French text of Confirmatio Cartarum under the heading "Articuli incerti in Magna Carta,"<sup>1</sup> "No tallage or aid," it says, "shall be laid or levied by us or our heirs in our realm, without the good will and assent of the archbishops, bishops, earls, barons, knights, burgesses, and other freemen of our realm."<sup>2</sup>

<sup>1</sup> 2 Walt. de Hemingb. 152, 153.

<sup>2</sup> The statute is in Adams and Stephens, *Sel. Doc.* 88, translated. The Latin text is in Stubbs, *Sel. Chart.* 497, 498.

Seizure of corn, wool, and leather was provided against, and the maletolt was forever done away with. Humfrey Bohun and Roger Bigod received pardon for themselves and their following for failing to serve in the train of Edward when he went to Flanders.

*De tallagio non concedendo* was denominated a statute in the Petition of Right and declared to be such by decision of the judges, in the Hampden case in 1637. In all probability, however, it is nothing but the Latin abstract of Confirmatio Cartarum, included by Walter of Hemingburgh in his narrative for the greater convenience of the reader, together with a formal statement of the pardon of the two earls. That Edward did not feel himself bound by the restrictions of the "Statute" is shown by the fact that in 1304 he tallaged the towns and the royal demesne. Furthermore, the nation seems at the time not to have regarded the Chronicler's articles as law, for they registered no complaint against Edward's tallage.<sup>1</sup>

<sup>1</sup> In this connection see McKechnie, *Magna Carta*, 281;  
<sup>2</sup> Stubbs, *Const. Hist. Eng.* 148-150, and *Sel. Chart.* 497;  
Medley, *Eng. Const. Hist.* 507, 508.

The appearance of *Confirmatio Cartarum* marked a stage in the history of parliamentary taxation. During the reigns of Henry III and Edward, machinery was constructed which could carry out the chapters of *Magna Carta* providing for taxation by assent. The Parliament of the three estates, assembled for the purpose of meeting the pecuniary necessities of the king, proved itself to be the easiest and most effective means by which the whole nation could grant taxes. But the evolution from the *Commune Concilium*, the rough prototype of Parliament, had scarcely gone farther than to supply a convenient instrument of taxation. In 1297 every tax did not need the assent of Parliament as the prerequisite to its levy; *Confirmatio Cartarum* was not all-inclusive. More than that, the question was still undetermined as to whether the granting of supplies should always wait upon redress of grievances. If Parliament should maintain that principle in practice, then its hold would be secure upon the executive. Power in 1297 was not far from a balance between king and nation.

If the evolution of a government can ever

be attributed to the directing skill of man rather than to the slow weaving of events, the construction for England of an engine of popular taxation can be ascribed to Edward Plantagenet, and in less degree to the drafter of the working plan, Simon de Montfort. Edward perceived the nation's problem and adapted such means as lay near his hand to its solution. So it was that an assembly, not only of the magnates of the kingdom, but of elected knights of the shire, of parish priests from the inferior clergy, of merchant citizens and burgesses from the towns, came together to provide in common for the common need.

## V

### TAXATION BY THE COMMONS 1297-1461

Character  
of the  
period

THE years subsequent to 1297 up to the time of the Tudors comprise a period of differentiation within Parliament itself. Save for the event of the year 1340, when the statute was passed which completed the movement punctuated by *Confirmatio Cartarum*, to the effect that every form of taxation must have the sanction of Parliament in order to be legal, the three centuries showed greater progress inside the walls of Parliament than beyond them. Struggles there were in plentitude between king and Parliament to secure adherence in practice to the theory enunciated in 1340, but the great question was that of the ruling power within Parliament. It is during this period that the Commons come forward as the sole initiators of taxes, leaving

to the Lords merely the coördinate power of consent. In close interrelation with this monopoly of power over the public purse, comes, in consequence of the theory that supplies must wait upon redress of grievances, the advance toward control by the House of Commons of the entire machinery of government, legislative and executive.

It is a period of confusion and contradiction. Time and again constitutional life seems to be dead. War, disputed succession to the crown, tyranny, slipshod government, — these and more tend to make the years 1297-1461 a bundle of scenes ill-bound together. The Wars of the Roses, the struggles with France for various causes and with varied consequences, the doting of monarchs upon foreign favorites, all contribute toward popular distraction from that interest in government, that keen hostility to maladministration, which makes for constitutional progress. There was no leader to prick the public conscience; no Simon de Montfort or Edward Plantagenet to inaugurate reforms in the great matters of government.

When Edward I put his name to *Confirma-*

The Par-  
liament of  
Lincoln,  
1301

tio Cartarum at Ghent, on the 5th November, 1297, he had still ten years to live. In 1301, he re-confirmed the Charters in a bill of some twelve articles forced from him by the barons in a manner which he denounced as outrageous, and thereby concluded the baronial conflict. The barons presented their claims at the Parliament of Lincoln which was summoned for the 20th January, 1301, and included amongst them, beside the plea for a confirmation of the Charters, a demand for the enforcement of general reforms, this last to be the prerequisite for a grant of money. A fifteenth of all movables was then voted to the king, to be paid upon the completion of the reforms, the date proposed being Michaelmas next coming.<sup>1</sup> The clergy, who still professed adherence to the bull "Clericis laicos," with the approval of the baronage averred that they could not acquiesce in any grant of money in the face of papal prohibition. Edward, in his reply to the claims made by the barons, declared his unwillingness to admit the validity of the assertion that papal consent was necessary to the clerical grant. His confirma-

<sup>1</sup> *Patent Rolls*, 24th Oct., 1301, in Stubbs, *Sel. Chart.* 446.

tion of the Charters was dated 14th February, 1301.<sup>1</sup>

Edward's last years were years of financial difficulty. In 1302 at the Parliament held on the 1st July, at London, he received from the lay estates and the clergy a fifteenth of temporal goods.<sup>2</sup> The same year saw him turn back to the aid *pur fille marier* which the barons had granted twelve years previously in June, 1290; and in 1303 he attempted to obtain the consent of the merchants to an increase in the custom on wine, wool, and merchandise. He called a meeting at York, quite irregular in its constitutional aspect, and presented the matter for its consideration. The merchants would not listen to the plea and the matter, as far as denizens were concerned, was dropped.<sup>3</sup> Five months previously, on the 1st February, Edward had had better fortune in a similar effort with the foreign merchants. On the principle that the crown had the right to close the ports to merchant strangers,

Edward's  
financial  
expedients

<sup>1</sup> See 2 Stubbs, *Const. Hist. Eng.* 156-158, citing 1 *Parliamentary Writs*, 104.

<sup>2</sup> Walt. de Hemingb. 223.

<sup>3</sup> 1 *Parl. Writs*, 134-135, in Stubbs, *Sel. Chart.* 500-501.

Tunnage  
and pound-  
age and  
other cus-  
toms

Edward entered into negotiation with the leading men amongst them, and in return for a grant of all the privileges and liberties essential to them, they agreed to a fifty per cent. increase over the rates paid upon wools and leather by English-born merchants. Beside these were new duties upon other commodities, whether they be exported or imported: wine, 2s. on the tun, a custom which was to achieve notoriety under the name of tunnage; cloth, from 1s. to 2s. on the piece depending upon the dye; general merchandise, 3d. in the pound of 20s., subsequently called poundage; and wax, 1s. per quintal.<sup>1</sup> This agreement between king and merchants, known by the title "Carta Mercatoria," was not technically in contravention of Confirmatio Cartarum, notwithstanding the provisions of the latter against the levying without national consent of any but the "ancient prises" and the custom on wool previously granted. Confirmatio Cartarum was a grant to Englishmen and to Edward's sharply legal mind, its liberties did not extend to foreigners, however closely knit

<sup>1</sup> Carta Mercatoria, in Hall, 1 *History of the Customs*, Appendix, 202-208; 1 *ibid.* 69-70.

their relations might be with the king's own people.

In 1304 Edward took from the demesne cities and boroughs and the royal demesne a sixth of movables.<sup>1</sup> The records of the Parliament of 1305, far from noting any complaint against the king's tallage, contain this memorandum: "To the petition of archbishops, bishops, prelates, earls, barons, and other good men of the land, praying that the king wills to grant them the power to tallage their ancient demesne . . . even as the king has tallaged his demesne, it was answered, 'Let it be as petitioned.'"<sup>2</sup> This is all but final evidence against the validity of *De tallagio non concedendo*.<sup>3</sup>

Tallage,  
1304

The great Edward died at Burgh-upon-Sands on Friday, the 7th July, 1307, and the sceptre fell into the nerveless hand of Edward II. The new king did not inherit his father's

Edward II,  
1307-1327

<sup>1</sup> 2 Walt. de Hemingb. 233; *Patent Rolls*, a. 1304, 6th Feb., in Stubbs, *Sel. Chart.* 447.

<sup>2</sup> 1 *Rot. Parl.* 161-162.

<sup>3</sup> The only other instance of taxation to be noted was the aid granted in 1306 by knights and barons (a thirtieth), and by citizens and burgesses (a twentieth), on the occasion of knightening the king's son. 1 Rymer, *Foedera*, part 4, 48.



great attributes nor his good fortune; he was improvident and unperceptive, the faithful dupe of advantage-seeking associates, the lavish spender of money he did not have, the chief enemy of himself. At last, when he had reigned some twenty years, he was put down and his son succeeded in his stead. Edward II's accession was undisputed; at Carlisle, on the 20th July, he received the homage and fealty of the English baronage, and six months later on the 25th February, 1308, he was crowned. The coronation oath he was obliged to take in French, not being familiar with the Latin tongue. The oath was more than usually stringent; the last of the four promises required of the king was this: "Sire, do you grant to hold and to keep the laws and righteous customs which the community of your realm shall have chosen, and will you defend and strengthen them to the honor of God, to the utmost of your power?" Edward answered, "I grant and promise."<sup>1</sup>

Edward did not call a Parliament between

<sup>1</sup> 1 Rymer, *Foedera*, part 4, 112. Also, Stubbs, 2 *Const. Hist. Eng.* 331.

October 1307, and April 1309.<sup>1</sup> He was in fear, apparently, of an attack upon his foreign favorite, Piers Gaveston, and was desirous of shielding him, as Charles I attempted to shield Buckingham three centuries later, by doing without a Parliament. The only merit of the favorite seems to have been the deep, and in its consequences the pathetic love with which he inspired the young monarch. He was self-seeking, avaricious, willful, and capable of exercising a domination over the king as complete as it was profitable to himself. At last, however, the loans, which his Italian bankers, the Friscobaldi had supplied Edward, withered away and he was obliged to issue a summons to a Parliament.

Parliament met on the 27th April, 1309, with a full attendance of clergy, lords, knights and burgesses. In response to Edward's urgent request for funds, the lords, burgesses and knights granted him a meagre twenty-fifth, but only on condition of a redress of

<sup>1</sup> A Parliament of the three Estates at Northampton, 13th Oct., 1307, granted him an aid on the event of his marriage and coronation, and for the burial of Edward I. The clergy granted a fifteenth, the towns a fifteenth, and the barons and knights a twentieth of movables. 1 *Rot. Parl.* 442.

Tentative  
abolition of  
the New  
Customs

grievances, these being detailed in a schedule of eleven articles.<sup>1</sup> Two of the eleven have to do with taxation; the first was directed at the abuses of purveyance; the second hit more nearly, having to do with the New Customs which Edward I had provided for in the Carta Mercatoria of 1303.<sup>2</sup> "And as to the customs which the king taketh by his officers —," so goes the memorandum in the Rolls, "that is to say, of every tun of wine, two shillings; of every cloth which alien merchants bring into his land, two shillings; and of every pound value of avoir de pois, three pence — the king willeth at the request of the said good people that the said customs of wines, clothes, and avoir de pois, do cease at his will, in order to know and be advised what profit and advantage will accrue to him and his people by ceasing the taking of those customs; and the king will have counsel according to the advantage which he shall see therein: saving always to the king the ancient prises and customs anciently due and approved." The

<sup>1</sup> 1 Rot. Parl. 443-445.

<sup>2</sup> The second article is given in translation in Hall, 1 *History of the Customs*, Appendix, 208.

king gave orders that the conditional grant of the twenty-fifth be collected.

The trouble over Gaveston, however, was not settled, and he became increasingly worrisome to the barons. Furthermore the customs were collected not by Englishmen but by Edward's Italian bankers. In March 1310, meeting in council, the barons drew up a petition praying against the impoverishment of the exchequer despite grants of money; the king, so they said, was still exacting prises and living by purveyance contrary to the engagement of 1309. Edward, still hoping to shield Gaveston, assented to the election of a commission of twenty-one, known as the Lords Ordainers, who exercised his authority for the space of a year and a half.

The  
Lords Or-  
dainers,  
1309-1311

The Lords Ordainers, recalling in their composition and purposes those who put forward the scheme of reform in the Provisions of Oxford of 1255, proceeded to promulgate ordinances for the correction of abuses. On the 2d August, 1310, six ordinances were made public and received the confirmation of the king.<sup>1</sup> By the fourth, it was ordained "that

<sup>1</sup> 1 Rot. Parl. 446-447.

the customs of the realm be kept and received by people of the realm, and not by aliens; and that the issues and profits of the same customs, together with all other issues and profits of the realm arising from any matters whatsoever, shall come entirely to the King's exchequer, . . . to maintain the household of the king, and otherwise to his profit, so that the king may live of his own, without taking prises other than those anciently due and accustomed; and all others shall cease."<sup>1</sup> Despite the apparent inclusion of the "New Customs" within the meaning of this ordinance, their resumption was ordered the same day, on the ground that during the period of their prohibition, prices had not been reduced.<sup>2</sup>

Parliament met on the 8th August, 1311, to receive the final report of the Ordainers, and sat for two months. Thirty-five additional articles were drawn up in Parliament.<sup>3</sup>

New  
Customs  
abolished

By the tenth article new prises are to be abolished, and by the eleventh the New Customs

<sup>1</sup> Translation given in Adams and Stephens, *Sel. Doc.* 93.

<sup>2</sup> Stubbs, *Const. Hist. Eng.* 340, note 1, and citations.

<sup>3</sup> 1 *Rot. Parl.* 281-286.

are done away with in their entirety. "New customs have been levied," says the ordinance, "and the old enhanced, as upon wools, cloths, wines, avoirdupois, and other things, whereby the merchants come more seldom, and bring fewer goods into the land, and the foreign merchants abide longer than they were wont to do, by which abiding things become more dear than they were wont to be, to the damage of the king and his people; we do ordain that all manner of customs and imposts levied since the coronation of King Edward, son of King Henry, be entirely put out, and altogether extinguished for ever, notwithstanding the charter which the said King Edward made to the merchant aliens, because the same was made contrary to the Great Charter . . ., saving nevertheless to the king the customs of wools, woolfells, and leather; that is to say, for each sack of wool, half a mark, and for three hundred woolfells, half a mark, and for a last of leather, one mark . . ., and henceforth merchant strangers shall come, abide, and go according to the ancient customs. . . ." <sup>1</sup> On the 9th October, the day upon which Par-

<sup>1</sup> Translation given in Adams and Stephens, *Sel. Doc.* 93-94.

liament rose, the order went out which made the ordinance effective.<sup>1</sup>

Banish-  
ment of  
Gaveston

Gaveston, the hated favorite, whose corruption and acts of oppression had furnished the immediate cause for the reform movement, was amply provided for. He was put under sentence of perpetual banishment and in order to safeguard themselves against the return to power of him and his kind, the barons reiterated the demand made in 1244, that the appointment of ministers be subject in the future to their council and consent.<sup>2</sup> The king gave his assent to the ordinances on the 30th September and two weeks later they went out to the sheriffs for publication.

The Parliament which met in 1312 granted Edward no money. His position was desperate and he turned everywhere in the hope that he could raise funds wherewith to meet his necessities; the merchants and the clergy, even the

<sup>1</sup> 2 Stubbs, *Const. Hist. Eng.* 345 and note 2, with citations.

<sup>2</sup> Edward, despite the ordinance banishing Gaveston, in January, 1312, recalled him. But the restoration was fatal to the favorite. Thomas of Lancaster intercepted him on his way back to London and murdered him. Gaveston was avenged, however, in 1322, when Edward for the moment securing the upper hand, took Lancaster and beheaded him.

Pope, were induced to lend him money. But they could not satisfy his needs; therefore in December, 1312, the Council determined to levy a tallage on the demesne towns and the royal demesne of a fifteenth of movables and a tenth of rents.<sup>1</sup> The imposition met with opposition, resistance being most riotous in London and Bristol. The objections which the people of Bristol raised were not based upon legal grounds; it so happened that at the moment certain of their burgesses were confined in the Tower of London, and that grievance, so they maintained, warranted their refusal. The basis for resistance raised by the citizens of London was not so casual; they claimed immunity from a royal tallage on the ground of the "ancient privileges" guaranteed to them under Magna Carta. Neither cited *De tallagio non concedendo* as the defense of their actions, and the presumption against the validity of the so-called statute is therefore enhanced. The king secured his payment by way of compromise; the Londoners granted a "loan" of £400 and another of £1000, from which sums they were to be relieved at the

Tallage of  
1312:  
Riots in  
London  
and Bristol

<sup>1</sup> 1 Rot. Parl. 449.



time of collection of the next general aid. Many other towns escaped upon the ground that they were not situated within the royal demesne. The principle that the king could levy tallages upon his own demesne thus remained unquestioned; but no tallage was levied during the rest of this reign.<sup>1</sup>

It is unnecessary to follow Edward II to

<sup>1</sup> Other instances of taxation during the reign were: 1313, October. Parliament grants a tax on movables, — the barons and knights a twentieth and the towns a fifteenth. Grant made in consequence of a general pardon issued by Edward. 1 *Rot. Parl.* 448. Cf. Thom. Walsingham, *Hist. Anglicana*, ed. 1 Riley, 136. 1315, Jan.-March. King put on an allowance of £10 a day. The clergy grant a tenth on certain conditions, the towns a fifteenth and the barons and knights a twentieth. 2 Stubbs, *Const. Hist. Eng.* 355, and citations. 1316. Towns grant a fifteenth, the knights and barons offer a soldier to be supported by each township, and the clergy express their willingness to contribute a tenth in their own convocations. 1 *Rot. Parl.* 450-451. 2 Stubbs, *Const. Hist. Eng.* 356. The grant of a soldier was afterward compounded for by a grant of a sixteenth. 1319. The towns grant a twelfth, the barons and knights an eighteenth. 1 *Rot. Parl.* 454-455. 1320. No taxes, save a clerical tenth, granted by the Pope. 2 Stubbs, *Const. Hist. Eng.* 363, note 2. 1322. Clergy grant a tenth for 2 years. Knights and barons grant a man-at-arms from each township for 40 days. Commuted by money payment. Edward, being for the moment supreme, restores the New Customs for a year. 2 Stubbs, *Const. Hist. Eng.* 370, and note 2 and authorities there cited.

his melancholy end. His deposition came more as the result of stress in his own household than because of any strain which he put upon the constitution. Favorites, an unfaithful wife, and factions which he bred among his barons, did more to bring about his dethronement and his subsequent murder than any condition of taxation. In the list of grievances which Bishop Stratford drew up as furnishing cause sufficient for the overthrow of Edward, nothing appears which has any connection with the question of taxation, much less any assertion of parliamentary right to control it. The king consented to the election of his son in his stead on January 20, 1327. Eight months thereafter he died; few doubt that he was murdered.

The reign of Edward III dates from the 24th January, 1327. He was crowned five days later at the age of fourteen and took the same stringent oath as that which had failed to bind his father. Parliament appointed a council of government which was to be in constant attendance upon the king; but the queen and her familiar, Mortimer, assumed so dominant a control over the young king

Deposition  
of Ed-  
ward II

Edward III,  
1327-1377



that the influence of the Council was nil. Edward went through the formality of confirming the charters and forbidding illegal assessment of aids. His rule really did not begin until November, 1330, when Mortimer was killed.

Edward III, being no statesman, but a warrior, energetic, without scruple, lavish, and ambitious, was not a figure designed to loom large in constitutional history. He did not mould events as did his grandfather; he watched them move. As a matter of fact there was advance. Tallage was prohibited and there came, too, the abolition in law of other forms of arbitrary taxation.

Edward had in mind in 1332 the reduction of Scotland.<sup>1</sup> To that end he revived a financial expedient which had not been exercised since his father's embarrassment in 1312, and tallaged the demesne cities and boroughs, and the rural demesne. On the 25th June, he sent out orders for the collection of a fourteenth of movables and a ninth of rents.<sup>2</sup>

Tallage of  
1332 and  
its with-  
drawal

<sup>1</sup> Sept. 1327. Parliament at Lincoln granted a twentieth for the Scotch war. <sup>2</sup> *Rot. Parl.* 425.

<sup>2</sup> *Ibid.* 446.

Parliament met three months later, on the 9th September, and a request formulated by the prelates, earls, barons, and the knights of the shires, was addressed to the king praying the recall of the commission for the tallage; Parliament offered as a substitute a fifteenth from the shires and a tenth from the towns. Just why a Parliament in which the Rolls do not note the inclusion of the burgesses should accomplish such a substitution, which obviously benefited the townsmen, is not clear, unless a considerable portion of the knights dwelt within the royal demesne or in small towns formerly subjected to the exaction of tallage. In his acceptance of the grant Edward promised for the future that he would not lay such a tallage, "Except as was customary in the time of our ancestors, and as he might rightly do."<sup>1</sup> It was not, however, until the sweeping legislation of 1340 that tallage became illegal.

In parallel to the struggle against tallaging the royal demesne was the contest with the king in the matter of the custom on wool. Edward in 1328 confirmed the reës-

<sup>1</sup> *Ibid.* 66.

New  
Customs  
become a  
regular  
means of  
revenue

established scale of 1322 which his father in his hour of supremacy had laid upon the alien merchants, in amount equal to the "nova custuma" of Edward I. From this time the New Customs became a part of the regular revenue of the crown, though Parliament did not yield its sanction until a time some fifty years after the first levy, when, in 1353, it gave its assent to the Statute of Staples.

But the regulation of the relations between king and merchant denizens, and incidentally through them, his relations (aside from the New Customs) with the aliens, is not so briefly told. Throughout the reign of Edward III the question was being quietly fought out as to whether or not the king might tamper with the wool customs irrespective of parliamentary sanction. In 1332 Edward issued an ordinance which provided for the collection of a subsidy on the wool of denizens; the rate was to be half a mark on the sack and 300 woolfells, and twenty shillings on the last of leather. A year later on the 30th June, 1333, Edward recalled his ordinance, but he did not relinquish his grasp upon the customs; by negotiation with the merchants, he received

ten shillings on the sack and 300 woolfells and a pound on the last. In order to bolster up the legality of the proceeding, he issued a royal ordinance to the same effect.<sup>1</sup>

In August of the year 1336, when the king's arms were meeting with great success on the northern border, Edward, confident in his popularity, sent out royal letters forbidding the export of wool.<sup>2</sup> Parliament met at Nottingham the following month full of pride in the military prowess of the king, and granted him liberal aids. Not only did the barons and knights contribute a twentieth, the towns a tenth, the clergy a sixth, but the merchants, who were at this moment, so it appeared, on the verge of attaining to the dignity of a fourth estate in Parliament, granted him forty shillings on the sack of wool; and the foreign merchants were to pay an additional twenty shillings.<sup>3</sup> In the hope that its action would encourage the domestic manufacture of cloth, Parliament in March, 1337, passed a statute forbidding the exporta-

The wool  
customs

<sup>1</sup> 2 Stubbs, *Const. Hist. Eng.* 554.

<sup>2</sup> 2 Rymer, *Foedera*, Aug. 12, 1336.

<sup>3</sup> 1 Hen. Knighton, *Chronicon*, ed. Lumby, 477.

tion of wool, and offering foreign operatives special inducements to settle in England.<sup>1</sup> The embargo was to continue until the king and his Council should decide otherwise. Thus empowered, Edward and his Council issued an ordinance imposing upon denizens a custom of £2 on the sack and on 300 woolfells, and £3 on the last of leather; the unfortunate aliens were to pay double.<sup>2</sup>

The effect upon the people was immediate; unable to sympathize with the project of importing skilled labor and seeing only the curtailment in profits normally accruing from their chief article of export, they were led almost to the point of revolt. The Parliament which met in September 1339, in answer to the general cry for reform, brought forward measures aimed to allay the popular irritation. The barons made the curious grant of "the tenth sheaf, the tenth lamb, and the tenth fleece, payable in two years," and they "willed that the maletolt of wool lately

<sup>1</sup> Adam Murimuth., *Chronica* ed. Hog, 81.

<sup>2</sup> Stubbs, *Const. Hist. Eng.* 398, 555, with authorities there cited. The statute is given in 1 Hall, *Hist. of Customs*, 210-211.

levied afresh, be entirely removed and held to the old rate."<sup>1</sup> The knights and burgesses, questioning their ability to grant money to the king without first consulting their constituents, desired the matter deferred to a subsequent Parliament. They mentioned six grievances upon which they demanded redress. They asked release from the customary aids and prises, and "that the maletolt of wool and lead be taken as of old, for that the same is now increased without the assent of Parliament."<sup>2</sup> The new Parliament, in accordance with the will of the knights and burgesses, was summoned for the 20th January, 1340.

At this session no new legislation was undertaken. Edward was abroad and his absence discouraged the members from enunciating new principles. They showed themselves, however, sympathetic with the royal necessities. The lords again offered the tenth sheaf, the tenth fleece, and the tenth lamb; the commons granted 30,000 sacks of wool, on the condition of the royal acceptance of certain articles drawn by them, and in case their

<sup>1</sup> 2 Rot. Parl. 104.

<sup>2</sup> 2 Ibid. 105.

reforms were not favored by the king, they made a free gift of 2500 sacks of wool.<sup>1</sup> Edward called a new Parliament which met the 29th March, there being in attendance a large body of merchants. The prelates, barons, and knights made a gift of the ninth sheaf, fleece, and lamb in complement to the baronial tenth of the previous January, and the towns gave a ninth of movables; a fifteenth from the rest of the nation, such as had no wool and yet were not townsfolk, completed the grant, save for a custom on each sack of wool, on every 300 woolfells, and on every last of leather, of forty shillings.<sup>2</sup> But the gifts were conditional; the king was to accept the articles prepared by the commons. Being amenable to their will, he referred the petitions to a committee, part of which was selected by the commons themselves, with the understanding that it should draw up statutes embracing such of the matters prayed for as were of a permanent character.

The first statute met the demands of 1339. "And for this grant," it says, speaking of the

<sup>1</sup> 2 *Rot. Parl.* 107-108.

<sup>2</sup> 2 *Ibid.* 112-113. 2 *Walt. de Hemingb.* 354.

liberal wool subsidy mentioned above, "the king by the assent of the prelates, earls, barons, and all others assembled in Parliament, hath granted, that from the feast of Pentecost that cometh in a year, he nor his heirs shall not demand, assess, nor take, nor suffer to be taken more custom of a sack of wool of any Englishman but half a mark of custom only; and upon woolfells and leather the old custom. . . . And this establishment lawfully to be holden and kept, the king hath promised in the presence of the prelates, earls, barons, and others in his Parliament, no more to charge, set, or assess, upon the custom, but in the manner as afore is said."<sup>1</sup>

Statutory  
abolition  
of the  
maletolt  
and of all  
unauthor-  
ized taxa-  
tion

The second statute was still more sweeping: "We . . . will and grant for us and our heirs, to the same prelates, earls, barons, and commons, citizens, burgesses, and merchants . . . that they be" not "from henceforth charged nor grieved to make common aid, or to sustain charge, if it be not by the common assent of the prelates, earls, barons, and other great men, and commons of our said realm of

<sup>1</sup> 14 *Edw. III.* 1, in 1 *Statutes of the Realm*, 281, and in *Adams and Stephens, Sel. Doc.* 103-104.



England, and that in the Parliament; and that all the profits rising from the said aid, and of the wards and marriages, customs, and escheats, and other profits rising of the said realm of England, shall be put and spent upon the maintenance of the safeguard of our said realm of England and of our wars. . . ."<sup>1</sup>

The importance of these two acts is readily apparent. The promise of Edward to abide by the recommendation of Parliament in the matter of the subsidy on wool, was an admission by the king that not he but they had final control over the laying of customs duties. Thus was established the principle to be defended and likewise to be questioned in the future, that Parliament alone had power to lay a tax on wool. In the second place, by the statute which provided that no charge or aid should be levied but by consent of Parliament, tallage died a legislative death.<sup>2</sup> And

<sup>1</sup> 14 Edw. III, 2, in 1 *Statutes of the Realm*, 281, and in Adams and Stephens, *Sel. Doc.* 104-105.

<sup>2</sup> The definite inclusion of tallage within the scope of these charges and aids prohibited to the royal control had to be asserted further: 1348. Condition of the grant made by Parliament that no tallage or similar exaction should be imposed

not only was this statute aimed at tallages but as well at every species of unauthorized taxation. Thus was enunciated the profoundly important principle that Parliament was the sole authority for levying taxes not merely on the nation at large, as had long been the practice, but in every department of the government, on the royal demesne as readily as on the shires themselves. If the practice of future years had lived up to the ideal expressed in this statute, it would be possible to draw a line at the year 1340 and say that thereafter Englishmen exercised the right of taxing themselves.

Parliament the sole taxing authority in law

The commons perceived, apparently, that the incidence of indirect taxation fell upon the nation quite to the same degree as direct taxation. The customs, in the beginning undisputedly within the royal prerogative, and according to royalistic advocates unceas-

by the Privy Council. 2 *Rot. Parl.* 200; Adams and Stephens, *Sel. Doc.* 113. 1352. The king openly declares that he is not intending again to impose a tallage. 2 *Rot. Parl.* 238. 1377. Parliament petitions, nearly in the words of the statute of 1340. King replies that only a great exigency would induce him to disregard the petition. 2 *Rot. Parl.* 365.



ingly so up to relatively modern times, were contended for almost as heartily as power over direct taxation itself. "The history of the customs," says Bishop Stubbs, "illustrates the pertinacity of the commons as well as the evasive policy of the supporters of prerogative."<sup>1</sup> Prior to the accession of Edward III, the struggle for control, centering upon exactions in excess of the *antiquæ custumæ*, was quietly waged between king and Parliament. During his reign and afterward the watchfulness of Parliament kept up.

After the legislation of 1340, Parliament showed itself willing to bargain with the king for control of the customs duties, thus staying within its legal rights. It could only petition, it could not yet enforce; and when the king promised his assent to a petition he frequently forgot his word. An account of what became of the custom on wool is illuminating as indicative of the variation between petition and enforcement. In 1340, the king had received by grant of Parliament forty shillings on the sack, for a year and a half, on the understanding that he would abolish the maletolt. After

Checked  
history of  
the wool  
customs

<sup>1</sup> 2 Stubbs, *Const. Hist. Eng.* 557.

a lapse of two years,<sup>1</sup> Edward procured from the merchants without the consent of the commons, a custom of forty shillings on the sack and issued orders for its collection. The commons, exhibiting more than an elementary knowledge of economic principles, perceived that the tax fell not upon the foreign merchants, but upon the growers of wool. In response to the remonstrance of the commons made in the Parliament of May, 1343, Edward declared to them that the price to be paid for wool, being fixed by the authority of Parliament, would be constant, and that consequently the foreign merchants would feel the incidence of the tax.<sup>2</sup> The commons, duly impressed by so subtle an argument, consented to a reimposition of the exaction for three years under the sanction of Parliament. After the passing of the three years, and the ordinance fixing the price of wool having in the meantime been revoked,<sup>3</sup> the commons, finding that Edward showed no

<sup>1</sup> Bishop Stubbs conjectures 8th July, 1342, as the date of the grant. 2 *Const. Hist. Eng.* 412, note 2.

<sup>2</sup> 2 *Rot. Parl.* 140, given in Adams and Stephens, 110.

<sup>3</sup> 1 Dowell, *Taxation and Taxes*, 166, citing 18 Edw. III, 2 c. 3.

disposition to release wool from the custom, petitioned against its continuance.<sup>1</sup> The king replied that he had secured the assent of the baronage and of the merchants, and that he had already pledged the proceeds of it to his creditors. The commons, finding that they could not win their point, contented themselves with a belief that having established the principle, they could at any time demand a practice of it, and granted the perpetuation of the old rate for two years. In 1348, at the conclusion of that term, the commons again presented a remonstrance, asserting that the wool subsidy was really a land tax. They granted a fifteenth for three years on the condition that the subsidy of wool should cease in three years, and that for the future "no such grant should be made by the merchants." The wording was particularly conclusive, — no "imposition, tallage, or charge by way of loan or in any other manner," was to be laid "without the grant and assent of the commons in Parliament." And the enactment was to remain "as a matter of record, whereby they may have remedy if anything should be

<sup>1</sup> 2 *Rot. Parl.* 161.

attempted to the contrary in time to come."<sup>1</sup> Edward accepted the grant and assented to most of the petitions, but no new statute was based upon them, a fact which is taken to indicate that the oppressions complained of were recognized as illegal.<sup>2</sup>

Again in 1362 arbitrary exactions on wool received the attention of the commons and the statute passed in that year enacted that thereafter no subsidy should be set on wool without the assent of Parliament.<sup>3</sup> Notwithstanding the explicit and repeated assertions by the Commons that Parliament had the sole right to levy the subsidy, Edward at intervals exacted the maletolt. The matter reappeared in 1371 and was greeted with a similar statute.<sup>4</sup>

The details of the fifteenths and tenths,<sup>5</sup> of

<sup>1</sup> 2 *Rot. Parl.* 200. A translation is given in Adams and Stephens, 113-114.

<sup>2</sup> 2 Stubbs, *Const. Hist. Eng.* 418.

<sup>3</sup> 1 *Statutes of the Realm*, 371. Translation in Adams and Stephens, *Sel. Doc.* 128; 2 *Rot. Parl.* 271.

<sup>4</sup> 2 *Rot. Parl.* 308.

<sup>5</sup> In 1334 the fifteenth and tenth was compounded for by a fixed sum, rather than in accordance with a strict assessment. Hereafter each town and each county knew for how much it would have to answer. The expression was the fiscal equiv-

the tunnage and poundage, of clerical grants, and of the individual subsidies on wool belong rather to the domain of fiscal history than to a consideration of the growing power of the English Parliament to levy taxes.<sup>1</sup> The constitutional points receive illustration most clearly in the narration of the controversy over wool, since in respect of that and of tallage new questions were involved. As regards the rest, Parliament did not more than confirm itself in habits which it had already formed.

Appropriation of supplies

Side by side with the power to grant taxes was growing up the faculty for supervising the expenditure of money so raised. As far back as the second decade of the reign of Henry III, in 1237, William of Raleigh had suggested to the Commune Concilium that it appoint a committee with whom the proceeds of a grant be deposited and by whom the money be expended; that the suggestion was not taken was owing, perhaps, to the

alent of £39,000, less about £6,000 for decayed towns. <sup>1</sup> Dowell, *Taxation and Taxes*, 89.

<sup>1</sup> The fifteenths and tenths after 1334 noted in Dowell, 1 *Taxation and Taxes*, 89, note. Taxation, 1351-1359, see Stubbs, 2 *Const. Hist. Eng.* 424, note 1. Taxation, 1360-1368, see Stubbs, 2 *Const. Hist. Eng.* 433, note 1 and p. 432.

ignorance of the baronage. Edward I was too strong to permit of being so controlled, and under Edward II the whole power of the crown was for a time delegated to others; in neither reign was the principle of appropriation of supplies definitely put forward. But in the time of Edward III, owing doubtless to the vast sums thrown into his bottomless war chest, Parliament began to demand a voice in the disposition of the public funds. In 1340, as we have seen, it was denominated in the statute that the "profits of the said realm of England shall be put and spent upon the maintenance of the safeguard of our said realm of England, and of our wars."<sup>1</sup> The grants of 1346 and 1348, in so far as they accrued from the northern counties, were to be applied to defend the border against the Scots,<sup>2</sup> and in 1353 a subsidy on wool was granted to be applied solely for the purposes of the war.<sup>3</sup>

Whether or not the money was actually applied according to the direction of Parliament was another matter. Efforts to ensure

<sup>1</sup> 14 Edw. III, 2.

<sup>2</sup> 2 *Rot. Parl.* 161, 202.

<sup>3</sup> 2 *Ibid.* 252.

Examina-  
tion of ac-  
counts

the carrying out of the parliamentary will were begun as early as 1340. In that year a committee of lords and commons was appointed to examine the accounts of William de la Pole and the other collectors of the last subsidy.<sup>1</sup> In 1341 the Rolls of Parliament have it that "the great men and commons of the land pray, for the common profit of the king and of themselves, that certain persons be deputed by commission to audit the accounts of all those who have received the wool of our said lord, or other aid granted to him; and also of those who have received and paid out his money, as well beyond the seas as in the realm from the commencement of his war until now; and that the rolls and other remembrances, obligations, and other things made abroad be delivered into the chancery, to be enrolled and recorded, just as was wont to be done heretofore."<sup>2</sup> To the petition the royal response ran: "It is the king's pleasure that this be done by good men deputed for the purpose, with the addition that the treasurer

<sup>1</sup> 2 Ibid. 114.

<sup>2</sup> 2 Ibid. 128. Translation given in Adams and Stephens, *Sel. Doc.* 105-106.

and the chief baron be of the number; and that it be done concerning this as it was heretofore ordained; and that the lords be chosen in this Parliament. And also that all rolls, remembrances, and obligations made beyond the sea, be delivered into the chancery."<sup>1</sup>

There is not much reason to suppose that Edward adhered to this promise better than he held to others of a similar character, save that there appears no complaint from Parliament until the last year of his reign. In 1377, in voicing the demand of Peter de la Mare, the commons in the Good Parliament petitioned "that it may please our lord the king to name two earls and two barons, of those who shall seem to him best, who shall be guardians and treasurers as well of this subsidy now granted and of the subsidy which the clergy of England is yet to grant to the king our lord, as of the subsidy of wool, leather, and woolfells granted in the last Parliament."<sup>2</sup> The lords so chosen were to be

<sup>1</sup> 2 *Rot. Parl.* 130, given in Adams and Stephens, *Sel. Doc.* 106.

<sup>2</sup> 2 *Rot. Parl.* 364, given in Adams and Stephens, *Sel. Doc.* 135.



sworn before the commons, and were to expend the subsidies "for the said wars and for no other work." The high treasurer of England was to have nothing to do with it in anywise whatsoever. Decisive action, however, waited upon the next reign.

Death of  
Edward  
III, 21st  
June, 1377

The long life of Edward III came to an end on the 21st June, 1377. His was a reign which had seen much war, much poverty, much famine, and worse than these, the Great Plague. The time was not well designed, so it would seem, for constitutional advance, yet in the direction of parliamentary taxation, the progress was marked. To be sure, Parliament had not dared to come into open combat with the king, and had, in order to preserve its theoretical power, been many times obliged to sanction a tax after it had been levied. Thus did Edward play with Parliament throughout the argument over the wool tax, yet the nation did secure the enunciation of complete parliamentary control over the levying of taxes of every description in the sweeping legislation of 1340.

But Parliament had shown a disposition to reach out after powers which its prede-

cessors in some instances had exercised and in others foreshadowed. The history of the wool customs shows this if it shows nothing else, that Parliament was inclined to make supply wait upon redress of grievances; that the inclination was not a determination was owing to the fact of Edward's wars; withholding supply would wreck English military prestige far more quickly than the arms of France. Yet the time was not far distant when the grant would be reserved until the end of the session, and thus secure the redress of grievances before the granting of a supply. By other means, also, Parliament was reaching out to control the executive. By appropriating money for particular purposes, to which expenditure should be limited, and by demanding an audit of accounts to insure adherence to those limitations, the representatives of the nation were securing for it the control of the public purse, not only in the department of income but of outlay.

Throughout the reigns of Edward II and Edward III a process of differentiation had been going on within the walls of Parliament itself, resulting in separate sessions of lords

Separate  
sessions of  
the houses



and commons. The process had its beginnings, indeed, in the time of Edward I, yet no instance can be pointed to with certainty showing the separate sessions until 1332. In that year the Rolls of Parliament speak of distinct assemblies. In 1339 the division appears to have become permanent. The House of Commons in 1352 occupied the Chapter House of Westminster Abbey.<sup>1</sup> The separate sessions of lords on the one hand and the knights of the shires and the burgesses was the preliminary of the assumption by the two latter bodies, in name the House of Commons, of the power of initiating tax legislation.

Richard II,  
1377-1399

Edward III left the throne to the keeping of a boy, his grandson, the youthful Richard II. He was only eleven years old at the beginning of his reign, and only thirty-three when his brief attempt at absolutism brought him deposition, and then death. "The fair rose withered," as Shakespeare described his dethronement, but the withering was due to the attempt of the king, ill-advised and perhaps insane, to climb too high.

<sup>1</sup> Taswell-Langmead, *Eng. Const. Hist.* 211, note 1.

In the matter of taxation, however, the chief interest lies in the early part of his reign, when the years of Richard's minority gave the commons opportunity to enforce the exercise of the principle that taxes should not be levied without their consent, and to foster the theories advanced in the previous reign that they had a right to examine the public accounts and to appropriate supplies.

In the time of Richard II the examination of public accounts and the granting of money for specific purposes, became national issues. At his first Parliament, that of October, 1377, grants of two fifteenths and tenths were made for the prosecution of the French war on the express condition that two treasurers be appointed who should see to the due application of the proceeds.<sup>1</sup> The king chose William Walworth and John Philipot, merchants of London, the latter of whom is distinguished as one of the earliest English financiers, and these swore to perform their duties faithfully. It was not without difficulty, however, that the next Parliament, which met in October,

Trouble  
over audit  
of accounts

<sup>1</sup> 3 *Rot. Parl.* 7; translation in Adams and Stephens, *Sel. Doc.* 136.

1378, was able to secure an accounting. The commons demanded the accounts and for a time the chancellor attempted evasion, hoping, so it appears, to shield John of Gaunt who was suspected of obtaining money from the treasurers for his private purposes. He was forced to yield and the accounts were laid open to criticism, though with the incidental assertion by the king "that it had never been known that, of a subsidy or other grant made to the king in Parliament or out of Parliament by the commons, an account had afterwards been rendered to the commons or to any one else except to the king and his officers." More than that, there was to be understanding "that this shall not in future be considered a precedent or an inference that this should have been done otherwise than by the personal volition and command alone of our said lord the king. . . ." <sup>1</sup>

Nevertheless, this same Parliament upon the occasion of its grant to the king, petitioned that it be expended for the advantage of the kingdom, and that competent treasurers be

<sup>1</sup> 3 *Rot. Parl.* 35-36. Translation in Adams and Stephens, *Sel. Doc.* 137-138.

appointed to keep the accounts.<sup>1</sup> The thirteen-year-old king readily fell in with the idea. To the Parliament of 1379 he sent letters in which he said, "That you may be fully informed of the real nature of the said necessary expenditures made and to be made, the treasurers for the said war shall be present and shall appear, at such hour as pleases you, to show you clearly in writing their receipts and expenditures made since the last Parliament."<sup>2</sup> The House of Commons, later during the same Parliament petitioned for the discharge of the special treasurers, and prayed that the Treasurer of England with the Chamberlains of the Exchequer receive money as "was usual of old."<sup>3</sup> Here is an early instance of the individual action of the House of Commons. But in 1380, the tide turned back. The commons who were assuming leadership in the situation, hearing from the chancellor of the very serious embarrassment in which the crown found itself, were stung to the belief that there was ex-

<sup>1</sup> 3 *Rot. Parl.* 36.

<sup>2</sup> 3 *Ibid.* 56. Translation given in Adams and Stephens, *Sel. Doc.* 138.

<sup>3</sup> 3 *Rot. Parl.* 66.

Special  
treasurers

travagance in the royal household, or else that the ministers were incapable. They therefore prayed the king to allow the election in Parliament of the chief officers of state. Richard responded favorably and the commission was appointed, with the old treasurers of subsidies, William Walworth and John Philipot, as members.<sup>1</sup> By 1382 the reversion to the system of special treasurers was complete,<sup>2</sup> and from that time, save at moments of great national confusion, these officers were regularly appointed and had as their duties the keeping of accounts, both of income and outlay, which were to be presented before Parliament at its session immediately following.

Over the levy of taxes Parliament, so it appears, had unquestioned control throughout the reign;<sup>3</sup> the king's household was vastly

<sup>1</sup> 3 *Rot. Parl.* 73.

<sup>2</sup> 3 *Ibid.* 124.

<sup>3</sup> The taxes during the reign in summary:—Parliament of October, 1377. Two tenths and two fifteenths. 3 *Rot. Parl.* 7. Parliament of October, 1378. An increase of custom on wool and merchandise over the grant to Edward III in 1376. 3 *Rot. Parl.* 37. Parliament of April, 1379 (another session of the last Parliament). Superseded the above tax on wool, which had proven to be insufficient, with a graduated poll-tax

extravagant and the royal prerogative of purveyance was exercised to excess, but even

which varied according to the position of the taxpayer. A tax of a groat a head had been levied in 1377, but this was the first instance of a poll-tax of varied incidence. The payments: The Dukes of Lancaster and Bretagne, ten marks each; earls or their widows, four pounds; barons and baronets, two pounds; and so on down to persons of the lowest rank, who were to pay a groat apiece. (Further details, 1 Dowell, *Taxation and Taxes*, 94.) Proceeds were to be strictly for national defense. Produced about half as much as was expected, only £22,000. 3 *Rot. Parl.* 57-58, 72-73. Parliament of 1380. A tenth and a half and a fifteenth and a half with a year's subsidy on wool. A second Parliament, finding this amount insufficient, in the same year undertook to raise the "outrageous and intolerable" amount, £160,000. The means was another graduated poll-tax, varying from sixty groats to three, together with a continuance of the subsidy on wool, a custom which netted about £60,000 annually. The clergy undertook to raise their share of the money. The poll-tax was expected to bring about £66,000. 3 *Rot. Parl.* 75, 90. Parliament of 1382. A fifteenth and a tenth, to be devoted wholly to the defense of the realm. Tunnage and poundage for two years. 3 *Rot. Parl.* 124, 134. Parliaments of 1383. Grant of fifteenth and tenth made in 1382, given to Bishop of Norwich who was warring against the anti-pope in Flanders. He was held to account at the October session. Two half tenths and two half fifteenths were granted by the commons, one-half without condition, and the other half for the prosecution of the war if it be prolonged. Clergy made similar grants. 3 *Rot. Parl.* 151-152. Parliament of 1384. At spring session half a tenth and fifteenth. At fall session, two tenths and fifteenths, one of which was remitted the following spring. The object

in the articles of deposition no word of complaint, save in the most general terms, is

was the prosecution of a war in Scotland. 3 *Rot. Parl.* 167, 185, 398. Parliament of 1385. Granted a fifteenth and a half and a tenth and a half. Wool subsidy renewed for another year. 3 *Rot. Parl.* 204. Parliament of 1386. Half a tenth and fifteenth, with duplication if exigencies of war demanded. Continuance of subsidy on wool and merchandise, the object being for naval defense. Before Richard could obtain this grant, he had to consent to the appointment of a commission of reform to correct the irregularities in the realm and in his household. 3 *Rot. Parl.* 220-221. Parliaments of 1388. First session. Half a tenth and fifteenth with tunnage and poundage and the custom on wool. From the subsidy on wool £20,000 is awarded to the "Lords Appellant," who had brought charges against the royal favorites upon which they were convicted and punished. 3 *Rot. Parl.* 244-245. The increase of custom on wool is forbidden. Fall session. A tenth and a fifteenth. 2 Stubbs, *Const. Hist. Eng.* 505, note 3, and citations. Parliament of 1390. Subsidy on wool and merchandise. 3 *Rot. Parl.* 278. Parliament of 1391. A fifteenth and a half and a tenth and a half. Above subsidy on wool and merchandise renewed for three years at an increased rate. 3 *Rot. Parl.* 285-286. Parliament of 1393. Grant on wool and merchandise for three years. 3 *Rot. Parl.* 301. Parliament of 1394. Tunnage and poundage. 3 *Rot. Parl.* 314. Parliament of 1395. Fifteenth and tenth. 3 *Rot. Parl.* 330. Parliament of 1397. Custom on wool for five years. Tunnage and poundage for three years. Protest registered against the extravagance of the court. 3 *Rot. Parl.* 340. Parliament of 1398. A tenth and a half and a fifteenth and a half. A subsidy on wool, woolfells, and leather for the term of Richard's life. 3 *Rot. Parl.* 368.

levelled at the king for laying taxes unlawfully, and this remonstrance is unsupported by specific instances. Indeed, the most violent outbreak on the score of taxation was against Parliament itself.

Taxation  
by Parlia-  
ment

In 1380, Parliament found itself in this difficult position, that it was under necessity of supplying an immensely large sum, no less than £160,000, as speedily as possible. The French war, an expedition about to be undertaken against Scotland, and the usual expenses of the kingdom had so depleted the royal treasury that the king was sorely embarrassed; he was greatly in debt and his jewels were already pawned. The commons were at a loss to devise the means whereby so great a sum could be raised, and showed a disposition to shirk the burden. The lords undertook it and suggested three methods: a graduated poll-tax, a custom on merchandise, or a number of fifteenths and tenths. The commons, seeing in the first the virtue of rapid assessment and collection, chose it in spite of the disappointing proceeds of the poll-tax of two years previously. A subsidy on wool, the normal income from which would



amount to £60,000, was to serve as an auxiliary tax. The clergy undertook to raise a third of the remaining £100,000, leaving some £66,667 to accrue from the poll-tax. The rate varied according to individuals from sixty groats to three, with an understanding that the rich should help the poor, but that in no case should a man pay less than a groat for himself and his wife.<sup>1</sup>

The Rising  
of the  
Villeins

Here was the exciting cause for the Rising of the Villeins which Bishop Stubbs describes as "one of the most portentous phenomena to be found in the whole of our history."<sup>2</sup> Following closely as did the poll-tax of 1380 upon those of 1378 and 1379, both of which bore heavily upon the lesser people, the impost set fire to tinder which had been long preparing for a conflagration. To enter into an inquiry as to the underlying causes and the ultimate consequences of this rising, would be to travel far afield. It is sufficient to observe that the payment of even so small a sum as a groat, served to bring freshly to the minds

<sup>1</sup> The scheme is given in translation in Adams and Stephens, *Sel. Doc.* 142-144, from the original in 3 *Rot. Parl.* 90.

<sup>2</sup> Stubbs. *Const. Hist. Eng.* 471.

of the most ignorant the maladministration in London, and to arouse in them the impulse, however ill-advised or ill-directed, to correct abuses in the executive. The Rising of the Villeins is illustrative of the not unusual conception that bad government is chiefly reprehensible because it is expensive.

The taxation during the years 1389-1397 was regular and moderate. Richard's rule for the time was that of a constitutional monarch and his Parliaments exercised the power of initiating taxation without opposition. Parliament was practicing what it had accomplished in theory in the long years of struggle since Magna Carta; it was accustoming itself to the exercise of the powers which in principle it had acquired. Fulfillment in fact was following upon enunciation of principle. Consequently it was with the greater shock to the nation that Richard II suddenly changed from his constitutional habit and took upon himself the powers of a despot.

The temptation came to him as a result of the action of Parliament itself. In 1398, following upon its grant the previous year, of a custom on wool for five years and tunnage

Richard's  
despotism  
and his de-  
thronement



and poundage for three years, it granted the subsidy on wool, woolfells, and leather to Richard for the space of his life. Beside this unprecedented liberality, it gave him as well a tenth and a half and a fifteenth and a half for the curious term of a year and a half.<sup>1</sup> Nor was this all. It cut off its own head by delegating its authority to a standing committee of Parliament. The opening was barely offered before Richard took advantage of it. With a revenue for life and a Council subservient to his will, scarcely ever was there better chance for despotism; but the acceptance of the opportunity was the close forerunner of disaster.

With the idea in his head that all was safe in England, Richard went off to Ireland. This gave Henry, the heir to the dukedom of Lancaster, a dream of an unguarded throne to which he could climb. Estranged by reason of his disinheritance, he was ready to act as soon as he saw such a vision. He landed in Yorkshire, moved southward, receiving allegiance of the people as he went, and won away from Richard the powerful supporters of the throne. Richard, returning, fought a

<sup>1</sup> 3 *Rot. Parl.* 368.

battle already lost. He resigned his kingship, and the nation as represented in Parliament, accepted his resignation.

The charges against the king, upon which sentence of deposition was pronounced, were summed up in thirty-three articles. Only four of them in any degree concern taxation. These are: (14) he had not repaid loans made in dependence upon his solemn promise; (15) he had alienated the crown estates, and exacted unlawful taxes and purveyances; (19) he had tampered with the elections by nominating the knights whom the sheriffs were to return, in order to ensure to himself a revenue for life; (21) he had extorted money from seventeen whole shires for pretended pardons.<sup>1</sup>

The charges were doubtless colored by enthusiasm for his deposition. The most serious, that of unlawful taxation, seems difficult to substantiate unless it be taken in connection with the article which asserts that the Parliament of 1398 was packed for the very purpose of securing a revenue for life. The complaint against purveyance seems equally ill-founded; during the reign of Edward III it had assumed

<sup>1</sup> 3 *Rot. Parl.* 417 ff.

the proportions of a great abuse of prerogative, but it was not in the time of his grandson an object of great concern to the nation. Thomas of Walsingham, whose tone is somewhat querulous, gives substance to the charges about the nonpayment of loans and the exaction of money for pretended pardons. "Promising in good faith to repay," he says, "he never after gave the money back to his creditors." Further, "The clergy and the common people and the temporal lords were constrained to give the king sums of money beyond the strength of man to bear, in order to buy back his good will."<sup>1</sup> The step was very short to the forced loans of the Tudors.

The trouble with Richard was that he did not go to school to history. Parliament was putting into practice what it could learn from the experience of its predecessors. Richard, swept with a desire, intense and perhaps insane, to wield the sceptre of absolutism, was blinded to what he might have read, and underwent the consequences.

Henry IV,  
1399-1413

Henry IV was better advised; at any rate, he was politic enough to live closely by what

<sup>1</sup> 2 Thom. de Wals. 230-231. Cf. 3 Rot. Parl. 62.

he had learned. He was suspicious, cautious, slow and faltering in action save in the one supreme instance of seizing the throne; an exceedingly good politician. The power of Parliament and especially of the commons during his reign was more complete than ever before, — fuller, indeed, than it should be again until after the final hand-to-hand struggle with the Stuarts. In the matter of taxation, instances of illegality are rare; Parliament continued to exercise the supreme control in voting taxes; and in the more recently acquired rights of appropriating supplies and examining public accounts, the supremacy of Parliament was established. Not only does this observation hold good during the reign of Henry IV, but it is equally applicable to the two Lancastrians who succeeded him.

In 1400 there appears to have been an exception to this rule. Henry apparently secured an aid not from Parliament but from the Great Council. There was the understanding, however, that the grant was binding not upon the nation at large but upon the members of the Council.

In 1401 the commons attempted to make

dependence of supply upon redress of grievances a part of the regular parliamentary procedure. They prayed the king that they know his responses to petitions before setting themselves to the business of granting a supply. Henry met the issue squarely. "On the last day of the Parliament," say the Rolls, "response was made that this manner of deed had not been seen nor used in the time of any of his ancestors or predecessors, that they should have any response to their petitions or knowledge of the same before they had taken up and completed all the other business of Parliament, be it to make any grant or otherwise. And therefore the king did not wish in any way to change the good customs and usages made and used in former times."<sup>1</sup> Nevertheless, the commons proceeded to put into practice the substance of their demand by delaying their grants of supply until the last day of the session, when the most important of the petitions would have received answers. Thus the next Parliament, that which met on the 30th September, 1402, withheld its

Practice of  
delaying  
grants

<sup>1</sup> 3 *Rot. Parl.* 458. Translation given in Adams and Stephens, *Sel. Doc.* 173.

grant until the 24th November; the session closed on the 25th and no business was transacted in the meantime.

The chief advance in the reign of the new king lay not in a fuller control by Parliament in the matter of laying taxation; that would scarcely have been possible. But it lay rather in a differentiation of powers within Parliament itself, leading to a more complete supervision of taxation by the House of Commons. Since the end of Edward III's reign the theory had been practiced that the commons should exercise a decisive power over the levy of taxes, as illustrated in the levy of the poll-tax of 1380.

Initiation  
of tax  
levies in  
the House  
of Com-  
mons, 1407

The form of making a grant, "made by the commons with the assent of the lords spiritual and temporal" first occurred in the grants to Richard II in 1395.<sup>1</sup> Votes of money previous to that year were made in conjunction with the House of Lords. The phrase was repeated in the grants of 1401 and 1402.

In 1407 came the assertion that to the commons not only belonged decisive power, but that they alone had the faculty of originating taxation. It came not as a direct demand for

<sup>1</sup> 3 *Rot. Parl.* 493.

the yielding of a principle, but as an implication that the practice already existed, and as such it gains in strength.

The trend of events leading up to the significant reference is interesting. In 1407 the lords had held a debate in the king's presence respecting the condition of the kingdom, and had determined upon the number of subsidies needful for national defense. Henry, for the moment forgetting his politics, in a peremptory tone requested the commons to send a delegation to the House of Lords "to hear and to report to their companions that which they should have in command of our lord the king." The commons sent a committee of twelve in response to the request; they heard that "it was the will of our said lord the King they should report to the rest of their companions" the determination of the lords, and that, "they should see to it that they conformed most nearly to the purpose of the Lords aforesaid." When the delegates returned, their report was received by the commons as being an infringement upon their liberties. The king, hearing of the temper of the commons, reassuming imme-

diately his habit of the politician, "declares, by the advice and consent of the lords in manner following," that it is lawful for both houses to commune apart by themselves "of the state of the realm and of the remedy necessary for the same." So far the king has merely recognized the need for separate deliberations by the two houses; the phrase which implies the existence in the House of Commons of the power to initiate taxation is this: "Any grant by the commons granted, and by the lords assented to."<sup>1</sup> Thus is admitted by implication the order in which a grant should be made by the two houses. In the same communication the king renounces any right which he might previously have held to know the amount or conditions of a prospective grant until both houses should be of one mind. The grant which eased so sweeping an admission from the king was generous.<sup>2</sup> It consisted of a fifteenth and a half and a tenth

<sup>1</sup> 3 *Rot. Parl.* 611. Translation given in Adams and Stephens, *Sel. Doc.* 125-127.

<sup>2</sup> In 1472 was a marked departure from the rule. A grant regularly enacted, appropriating revenue and income of the commons, was changed by the lords to include a tax on their own property. 6 *Rot. Parl.* 4-8. The good intent of the act,



and a half, a subsidy on wool, and tunnage and poundage for two years.<sup>1</sup>

In 1410 Henry asked Parliament for permission to collect a tenth and a fifteenth annually, whenever Parliament should not be sitting. Had the request been granted, the result for a frugal monarch would have been hardly less than independence of parliamentary control. He was refused. Without the frequent necessity of calling a Parliament, Henry's last years, instead of their smooth constitutional trend, might readily have had as tragic a story as those of Richard II. He died in 1413.

Henry V,  
1413-1422

His son Henry V came to the throne without dispute, and for a brief nine years fired the souls of the English people with zest of conquest and pride of race. A warrior, the mediæval ideal of a king, he was yet noble of mind and soul. Had his brilliant career not so suddenly flickered and gone out, he might have won a place beside Edward I; as it was, the constitutional history of his reign reveals no struggle between people and mon-

justified in the eyes of contemporaries, apparently, its irregularity.

<sup>1</sup> 3 *Rot. Parl.* 612.

arch over the sordid wherewithal to fight his battles; both sides apparently honored the other. The taxation during his reign was heavy, but it was voted gladly to the king who could use it as a means to victory at Agincourt. Henry V, whom his people loved enough to make legendary participant in their revellings, died in France, 31st August, 1422.

Henry VI was almost as unfortunate in his birth as in his death, and his life seemed to bring him nothing but disaster. He was barely a year old when his father died, his troubled reign saw the Wars of the Roses, and tradition has it that he died by the hand of Richard, Duke of Gloucester, afterward king. Weak in health, the possessor of a mind which in boyhood showed the feverish precocity that foreshadows an unbalanced maturity, he was nevertheless generous, temperate, mild, and devoted.

Henry VI,  
1422-1461

The early part of his reign gives one of the few instances chronicled under the Lancastrian kings of an attack upon constitutional usages in taxation. In 1425 while the Duke of Bedford and Humfrey, Duke of Gloucester were acting virtually as regents to their nephew



Declara-  
tion for ap-  
propriation  
of supplies

the young king, Bedford together with various other lords announced in Parliament that a certain subsidy, which had been appropriated for a particular purpose, should be levied for the king's use notwithstanding the conditions attaching to it; they advanced an opinion of the justices favoring their action. The commons vindicated their right, however, in the same Parliament; they made a fresh grant, restating the former conditions, with this explicit addition, "No part thereof be beset ne dispendid to no othir use, but oonly in and for the defense of the seid roialme."<sup>1</sup>

It would be both wearisome and profitless to enter into a detailed account of the various subsidies on wool, of income taxes, of fifteenths and tenths which trod one on the heels of the other during the reign of Henry VI. One incident of a constitutional character, however, rises from the general regularity. In 1449, Parliament attempted to levy a tax upon the stipendiary priests, though usage had it that the clergy were to have the power of taxing themselves in convocation; a subsidy of a noble was levied upon each stipendiary priest,

<sup>1</sup> 4 Rot. Parl. 301-302.

for which they were to receive a general pardon at the hands of Parliament. Henry, perceiving that trouble was brewing, addressed the clergy, saying that it was for them to make the grant in convocation, and that it was for him to pardon. Thus Parliament, for the moment overreaching itself, was forced back upon the justice of precedent.<sup>1</sup>

The wars with France and with Burgundy, the heavy taxation incident to them, the rebellion of Jack Cade arising out of it, and the Wars of the Roses in 1453 following closely thereafter; the woeful struggle of Henry, bleached-out in mind, a dependent upon the efforts of a woman against the rising power of York; the wanton shedding of the noblest blood in England — these neither developed nor confirmed parliamentary power. Edward of York, it is sufficient to understand, became king on the 4th March, 1461, upon King Henry's overthrow. A momentary turning of the tide set him once more upon it, but his tenure was very brief and ended in tragedy.

Accession  
of the  
Yorkists

The passing of Henry VI brings us to the dawn of the Yorkist and Tudor era. During

<sup>1</sup> 5 Rot. Parl. 152-153.

the reigns of the son and grandson of Edward I and the reigns of Richard II and the Lancastrians, Parliament had developed swiftly, not so much in the assumption of new powers as in the distribution of powers within itself. The commons became a separate body. Burgesses learned to act in the House of Commons in concert with knights of the shires who in the time of Edward I had made common cause with the greater barons. Together they assumed the right of initiating taxes, with the understanding that the hereditary chamber should have solely the power of assent.

The right of Parliament as against that of the king to control taxation was enunciated again and again, not only in the instance of direct taxation, including the levies of tallage, but in the case of the customs, as indicated in the legislation prohibiting the maletolt.

But the enunciation of powers of Parliament was not followed by complete and undisputed exercise of the rights so enunciated. The kings clung to what they deemed their ancient prerogatives and more than once overstepped the law. The Yorkists and Tudors showed a disposition somewhat less amenable.

## VI

EXTRA-PARLIAMENTARY EXACTION  
1461-1603

WITH the coming of the Yorkist kings in 1461 there began a period lasting until the end of Queen Elizabeth's reign, in which the taxing powers of Parliament were subtly assailed by monarchs who knew how to use the law to their own advantage, regardless of its intent. Yet the powers, attenuated though they were, remained to form the substance of vigorous opposition to the attacks of the Stuarts, when they should try to practice their theories of absolutism.

Under Edward IV, whose reign dates from 1461, the forms of taxation by authority of Parliament were indeed gone through with. In that respect his reign was typical of the period. His early taxation, levied while the struggle with the Lancastrians was still in progress, was not particularly heavy; but be-

Edward IV,  
1461-1483

ing laid by Parliaments sympathetic with the Yorkist cause, Edward had little difficulty in exerting supreme influence over it. Four years after his accession, he was given the subsidy on wool and tunnage and poundage for life.<sup>1</sup> Beside these, Parliament granted him frequent fifteenths and tenths. Not content, however, with the grants made by Parliament, he had recourse to a new form of extortion known by the euphemistic title of benevolence. The benevolence was a gift made to the king by individuals or groups of them, ostensibly in charity, but in reality under enforcement. It differed from the forced loan, the exaction of which is mentioned in the list of charges leading to the deposition of Richard II, in that by it the king incurred no obligation for repayment. Henry VIII in later years proved himself a genius at obtaining both of these means of income. Edward found also that the revival of obsolete statutes and the laying of fines for breaches of them could be turned to profit; the collection of ancient debts due to the crown, and the utilization of the royal power to advance his own

Benevo-  
lences and  
forced  
loans

<sup>1</sup> 5 Rot. Parl. 508.

mercantile interests, Edward pushed to the extreme in order to supplement the not infrequent regular grants of Parliament.

Dowell retells the story given in Hall's *Chronicle* of Edward and a certain rich widow to whom he applied in person for a benevolence. In his younger days Edward was one of the handsomest men in the land, and the widow received his advances with favor. He asked her for a gift and she promptly gave him £20.

"By my troth," says she, "for thy lovely countenance thou shalt have even twenty pounds."

Edward, who had "looked for scarce half that sum, thanked her and lovinglie kissed her." Thereupon the lady doubled the benevolence, paying him a second £20, either, as the Chronicler remarks, "because she esteemed the kiss of a king so precious a jewele" or "because the flavour of his breath did so comfort her stomach." Such was a fifteenth-century conception of royal courtesy.<sup>1</sup>

Upon Edward's death in 1483, the crown for a moment rested on the head of his young

<sup>1</sup> 1 Dowell, *Taxation and Taxes*, 197.

Richard III,  
1483-1485

son, Edward V, only to be snatched away in favor of the lad's uncle Richard III. Richard received from Parliament in 1484 a grant of tunnage and poundage and the subsidy on wool for life.<sup>1</sup> His death on Bosworth Field the next year gave the world no opportunity to see what use he would make of the freedom which Parliament thus gave him.

Prohibition  
of benevo-  
lences,  
1484

During the brief three years of Richard's ascendancy, however, there occurred an assertion of right and its complementary statute which assume great importance in the light of later events. When Richard was invited to become king, he was presented with a remarkable address, which, among other things, cited the benevolences of the late reign as "extorcions, . . . agenst the Lawes of God and Man," and as more intolerable than "jopardye of deth."<sup>2</sup> At his only Parliament,

<sup>1</sup> 6 *Rot. Parl.* 238-240.

<sup>2</sup> "For certainly wee be determined rather to aventure and committe us to the perill of oure lyfs and jopardye of deth, than to lyve in suche thraldome and bondage as we have lyved long tyme heretofore, oppressed and injured by Extorcions and newe Imposicons, agenst the Lawes of God and Man, and the Libertee, old Police, and Lawes of this Reame, wheryn every Englishman is enherited." 6 *Rot. Parl.* 241.

held in 1484, benevolences were declared unlawful, and were to be "dampned and annulled forever."<sup>1</sup>

Henry VII, the first of the Tudors, ascended the throne upon the successful issue of the battle of Bosworth. The wonder of the era

The  
Tudors

<sup>1</sup> 1 Rich. III, c. 2.—"The king remembering how the Commons of this his realm by new and unlawful inventions and inordinate covetousness, against the law of this realm, have been put to great thraldom and importable charges and exactions, and in especial by a new imposition named a benevolence, whereby divers years the subjects and Commons of this land against their wills and freedom have paid great sums of money to their almost utter destruction; for divers and many worshipful men of this realm by occasion thereof were compelled by necessity to break up their households and to live in great penury and wretchedness. Their debts unpaid and their children unpreferred, and such memorials as they had ordained to be done for the wealth of their souls were made void and annulled, to the great displeasure of God and to the destruction of this realm; therefore the king will it be ordained, by the advice and assent of his Lords spiritual and temporal and the Commons of this present Parliament assembled, and by the authority of the same, that his subjects and the commonalty of this his realm from henceforth in no wise be charged by none such charge or imposition called benevolence, nor by such like charge; and that such exactions called benevolences, afore this time taken be taken for no example to make such or any like charge of any his said subjects of this realm hereafter, but it be dampned and annulled forever." 2 *Statutes of the Realm*, 478. Translation given in Adams and Stephens, *Sel. Doc.* 212.



which he introduced lies not in any increase in the powers of Parliament, but rather that they existed at all when the period closed. The one hundred and twenty years of the Tudor epoch exhibits no progress toward the realization of parliamentary supremacy; on the other hand, the trend was in the opposite direction. The Tudors were not tyrannical enough to rouse opposition to the fever heat as did John; they knew rather how to bridle their despotism in time to check revolt, and especially how to make unlawful acts assume the aspect of legality. Furthermore, the immense activity of commerce, the progress of literature, the religious reconstitution during the sixteenth century, were in themselves reasons for slow advance in matters of government; the stress of trade consequent upon the discovery of a new world, the absorbing interest in new subjects for thought, the intensity and magnitude of new religious conceptions, engaged the minds of men on subjects other than those of Parliament and king. As long as these worked in apparent harmony and the results did not greatly offend, men were content to let well enough alone. So it

was that the Tudors, surrounding themselves with a new nobility attached to the throne by reasons of their very origin and continuance, were able to follow their own devices and raise money almost as seemed to them good.

In all the twenty-four years of Henry VII's reign he called Parliament only seven times, and six of the seven Parliaments sat within the first eleven years of his kingship. Each was the occasion of a demand for money. At his first Parliament, that of 1485, he received a grant of tunnage and poundage and a subsidy on wool for life.<sup>1</sup> Three years later, however, the consequences of heavy taxation were disastrous. Need arising for the enlistment of an army with which to aid the Duke of Brittany against the King of France, a tax was devised which not only exacted a tenth of incomes from freeholders, but applied as well to movables, laying imposition upon articles used in trade and even merchants' stocks. This "new-found subsidy" proved so intolerable to the lower classes that a great insurrection broke out in the north against it.<sup>2</sup> The king with Tudor wisdom, remitted some £48,000

Parliaments of Henry VII  
The "new-found" subsidy

<sup>1</sup> 6 Rot. Parl. 335.

<sup>2</sup> 6 Rot. Parl. 421.



of the £75,000 which the tax was designed to raise, and Parliament gave him in return a fifteenth and tenth. In 1497, a similar rebellion occurred in Cornwall against a tax levied for the Scotch War.

With these examples of parliamentary taxation before him, Henry turned away to fields at once more profitable and less dangerous, at least in their immediate consequences.

Morton's  
crotch

He turned to the old expedient of the benevolence, despite the statute of Richard III prohibiting its imposition. The methods used in laying a benevolence are illustrated in the famous account by Lord Francis Bacon of the dilemma devised by Bishop Morton, Henry's Chancellor, "to raise up the benevolence to a higher rate; and some called it his fork and some his crotch. For he had couched an article in the instructions to the commissioners who were to levy the benevolence, that if they met with any that were sparing, they should tell them that they must needs have, because they laid up; and if they were spenders, they must needs have, because it was seen in their port and manner of living; so neither kind

came amiss."<sup>1</sup> Parliament, subservient to the king, actually registered for the moment its approval of the practice of levying benevolences, when in 1492 it passed the "Shoring or Under-propping Act" making debts still owing on gifts promised to the king legally collectable.

The benevolence was not the only means by which the ingenious monarch increased his income. Like Edward IV, he revived obsolete statutes and rigorously exacted fines in consequence of every infraction of them; but worse than that was his perversion of every function of the courts of law into a means of extortion. His odious instruments in that work were Richard Empson and Edmund Dudley who later were made to suffer for the evil practices of the father in the reign of the son. Beside these forms of imposition, the king pushed to the extreme the exaction of feudal dues accruing to the crown.

Henry VIII succeeded to the crown in 1509. With his hand always on the pulse of the nation, he knew when he could carry his designs into execution and when he must

Henry  
VIII's  
early  
taxation

<sup>1</sup> Taswell-Langmead, *Eng. Const. Hist.* 298, quoting from Lord Bacon's *Henry VII*, 121.

wait for a fever to subside. His attitude toward taxation was not characterized by the same uniform regard for constitutional formalities that distinguished his other acts, nor was Parliament on the other hand quite as subservient to his will as in matters farther from their purses. His first Parliament showed its trust in him by granting tunnage and poundage for life, but with the distinct provision that it be not taken into precedent. Beside this, the Parliaments of 1513 and 1514 made generous grants of a poll-tax, of a fifteenth and tenth and of two subsidies of six pence in the pound.<sup>1</sup> Despite the magnitude of the grant, no opposition seems to have been provoked, an unfailing sign of increasing wealth.

Cardinal  
Wolsey's  
breach of  
privilege,  
1523

At the Parliament of 1523, the first since 1515, Cardinal Wolsey committed a distinct breach of Parliamentary privilege. Under Henry IV it had been admitted by the king that both houses of Parliament were to commune apart, and that the king should have no

<sup>1</sup> For further details see Dowell, 1 *Taxation and Taxes*, 129, 130. A summary of the taxes of Henry VIII is given in Cobbett, 1 *Parliamentary History of England from the Earliest Period to the Year 1803*, London 1806; 565-6.

knowledge of the progress of a grant until the two houses be of one accord.<sup>1</sup> Wolsey, as representative of the royal power, reversed the usual process. Going into the House of Commons with all his following, "with his maces, his pillars, his pole-axes, his cross, his hatte, and the great seale too," — in the words of the speaker, Sir Thomas More, — he asked for no less than £800,000 and required that it be paid in four years; he suggested that it "be raised out of the fifth part of every man's goods and lands."

To the demand of the cardinal the commons maintained perfect silence. The speaker "with many probable arguments endeavoured to shew the cardinal that his manner of coming thither was neither expedient nor agreeable to the ancient liberties of that House."<sup>2</sup> Wolsey thereupon departed in a rage. The next day the matter was argued by the commons and the contention was made that "though some men were well-monied, yet in general it was known that the fifth of men's

<sup>1</sup> Above, 206, 207.

<sup>2</sup> More, *Life of Sir T. More*, 51, quoted in 1 *Parl. Hist.* 485-6.

goods was not in plate or money, but in stock and cattle. And that to pay away all their coin would alter the whole frame and intercourse of things."<sup>1</sup> For fifteen days the commons debated the question and at the end of that time granted to the king a graduated property tax, much smaller in amount and covering four years in the payment. Wolsey's displeasure was very great and he made a second journey to the commons in the hope that he might induce them to be more generous. He told them that he "desired to reason with those who opposed his demands." He was answered that "it was the order of that House to hear, and not to reason but amongst themselves."<sup>2</sup> Thus rebuffed, the cardinal went away.

Henry's  
commissions and  
benevolences

Henry did without Parliament for the next seven years, but he was not deprived thereby of money with which to carry on the business of government. In 1526, commissions were issued for the collection of a sixth from the goods of the laity and a fourth from the clergy.<sup>3</sup> The people immediately evinced

<sup>1</sup> 1 *Parl. Hist.* 486.

<sup>2</sup> 1 *Parl. Hist.* 490.

<sup>3</sup> 1 *Parl. Hist.* 588.

their knowledge of the law and complained that the proceedings were illegal; the clergy led the movement asserting that "the King could take no man's goods without the authority of Parliament."<sup>1</sup> The people began to murmur and insurrection seemed imminent. "If men should geue their goodes by a Commission," they said, "then wer it worse than the taxes of Fraunce, and so England should be bond and not free."<sup>2</sup> In Suffolk rebellion actually broke out; in London and in Kent the people were in a ferment. Henry, being what he was and knowing the nature of his subjects, eased the tension by shoving the responsibility of the measure on to the shoulders of Wolsey,<sup>3</sup> and declared that he would receive no money save as an "amiable graunte," which was collected in 1528, and was nothing more agreeable than a benevolence. To this the citizens of London raised objection on the ground of the statute of Richard III. The judges thereupon handed down an opinion that that statute, being the work of an usurper,

<sup>1</sup> Taswell-Langmead, *Eng. Const. Hist.* 300.

<sup>2</sup> Ibid, 300, quoting Hall, *Chronicle*, 696, 700.

<sup>3</sup> 1 *Parl. Hist.* 490.

was void. Thus did the courts evince their subservience to the crown, and showed themselves as open to royal influence as the tribunals of the Stuarts a hundred years later.<sup>1</sup> So in theory Henry's attempt at arbitrary taxation was frustrated; in practice, however, the imposition, though its burden was transferred from the turbulent lower classes to the more amenable people of substance, merely underwent a change of name. The exaction was unparliamentary whether it was levied as a king's tax or under the thin guise of a benevolence.

Forced  
loans, 1522  
and 1544

But Henry had other strings to his bow, and of these the forced loan was one which served him well. In 1522 commissioners were appointed throughout the kingdom to ascertain the value of every man's possessions and to require a certain part for the king, on the understanding that they be repaid out of the grants from the next Parliament. The promise of repayment was under the king's privy seal.<sup>2</sup> In 1544, forced loans were again ex-

<sup>1</sup> Henry levied another benevolence in 1545.

<sup>2</sup> The form of these royal promissory notes is as follows:—"We, Henry VIII, by the grace of God, King of England and

acted, this time from all persons rated at £50 and more per annum. Parliament, subservient to the king, far from protesting because of these arbitrary demands upon the pockets of the people, in two instances released the king from liability to payment. In 1529, Parliament "for themselves and all the whole body of the realm which they represent, freely, liberally, and absolutely, give and grant unto the King's highness . . . all and every sum and sums of money which to them and every of them, is, ought, or might be due by reason of any money . . . advanced or paid by way of trust or loan."<sup>1</sup> This caused much murmuring, but, as Hall's Chronicle rightly puts it, "There was no remedy." In 1544 a similar act of a servile Parliament not

of France, Defender of Faith, and Lord of Ireland, promise by these presents truly to content and repay unto our trusty and well-beloved subject, A. B., the sum of —, which he hath lovingly advanced unto us by way of loan, for defence of our realm, and maintenance of our wars against France and Scotland: In witness whereof we have caused our privy seal hereunto to be set and annexed the — day of —, the fourteenth year of our reign." Cited by Hallam, 1 *Const. Hist. Eng.* 26, note 1. from MS. Instructions to Commissioners.

<sup>1</sup> Stat. 21 Henry VIII, c. 24, cited in Taswell-Langmead, *Eng. Const. Hist.* 301. 1 *Parl. Hist.* 507.

only gives the king the funds borrowed under the forced loan of 1542, but commands the refunding of sums already paid by him to his creditors in discharge of debts so incurred.<sup>1</sup>

Profits of  
the Eng-  
lish Ref-  
ormation

The Reformation in England redounded to the financial benefit of the Crown. In 1532 the clergy were relieved by act of Parliament from the payment of annates or first fruits, the sums which the ordaining authorities exacted from those accorded any preferment in the church, and which amounted sometimes to as much as a year's income from the benefice. The exactions were denounced as having risen by "an uncharitable custom, grounded upon no just or good title," and through them "great and inestimable sums of money have been daily conveyed out of this realm, to the impoverishment of the same, and to the advantage of the court of Rome."<sup>2</sup> The same Parliament, meeting for its fifth session on the 15th January, 1533-4, reenacted the statute without the contingencies which had conditioned the

<sup>1</sup> 1 *Parl Hist.* 560, 578.

<sup>2</sup> 23 Henry VIII, c. 20, in Adams and Stephens, *Sel. Doc.* 144.

other.<sup>1</sup> Closely following came a statute that deprived the Pope of his petty exactions which for generations he had drawn from the English Church. Thus were discontinued peter-pence, procurations, fruits, fees for dispensations, licenses, faculties and grants.<sup>2</sup> The sixth session of this Parliament, meeting at the end of the year 1534, turned the procedure into comedy by attaching to "the King's imperial crown forever" the first-fruits and tenths of the annual income of all ecclesiastical benefices, the very payments which it had declared to be in conformity with an "uncharitable custom."<sup>3</sup>

Furthermore, at the session of 1533-4, Parliament had laid very definite restrictions upon the clergy in the matter of regular taxation.<sup>4</sup> Since the early part of the fourteenth century, indeed, almost since the beginning of Parliament itself, the lesser clergy had attended the sessions with great irregularity, and had voted their taxes for the most part in provincial assemblies. Now, however, came the general prohibition that the clergy should

Parlia-  
ment the  
confirming  
authority  
in clerical  
grants

<sup>1</sup> 25 Henry VIII, c. 20.

<sup>2</sup> 26 Henry VIII, c. 3.

<sup>3</sup> 25 Henry VIII, c. 21.

<sup>4</sup> 25 Henry VIII, c. 19.



not enact or execute ordinances binding upon themselves without the king's license and without his approval when once they were made. Included within the meaning of this prohibition was the granting of taxes. From thenceforward until the time of Charles II, when, without any special enactment but by simple process of evolution, the clergy began to be taxed in the same manner and according to the same rate as the laity, clerical grants were submitted to Parliament for confirmation.

Henry VIII died in 1547. Notwithstanding the heavy taxation, parliamentary and unparliamentary, which had been exacted during his reign, he remained popular with the great majority of his subjects to his death. His many vices were counterbalanced by his successful wars, the heavy taxation by the growing trade of England, and his semi-independence of Parliament by most efficient administration.

Elizabeth's  
accession,  
1558

After the lapse of eleven years, which in so far as they concern the evolution of the taxing power of Parliament, composed in effect an interregnum, Elizabeth succeeded to the

throne of England. Elizabeth's government was a despotism and was illegal; but it was so by sufferance, not because the nation was ignorant of its true character or because the people were unable to control it. When in later years the attempt was made to create a despotism against the voice of the people, the result was a Cromwell and his Charles I. Queen Elizabeth was loved by her subjects and they put their trust in her. The sympathy existing between queen and people could not be illustrated better than by the following anecdote, which suggests that under her rule benevolences were really made with the good will of the givers.

The queen, being at Coventry, is presented by the mayor with a purse heavily filled with gold.

"I have few such gifts, Mr. Mayor," says the queen; "it is a hundred pounds in gold!"

"Please, your grace," the mayor answers, "it is a great deal more we give you."

"What is it?" asks the queen.

"It is," the mayor replies, "the hearts of your loving subjects."

And the queen makes answer, "We thank

you, Mr. Mayor; it is a great deal more indeed."<sup>1</sup>

Liberality  
of Eliza-  
beth's Par-  
liaments  
Her extra-  
Parliamen-  
tary exac-  
tions

Subsidies were granted in Parliament with liberality and readiness. Forced loans were indeed exacted from the wealthy, but Elizabeth took care to repay honorably and as promptly as she could. A means of revenue which relieved her from the frequent necessity of applying to Parliament was the granting of monopolies, based upon the right of the crown to assure to an inventor or originator the exclusive benefits of his invention or innovation. By 1601, however, the royal power had encroached so far upon the rights of the individual that the grants of monopoly comprised exclusive control over many of the necessities of life. The list which was read in the House of Commons in 1601, included:—currants, iron, powder, cards, transportation of leather, vinegar, sea-coal, lead, oil, starch, glass, and even salt. The matter had been first discussed in the Parliament of 1571, was brought up again in 1597, and in 1601 Elizabeth with the tact which she could summon

<sup>1</sup> Dowell, 1 *Taxation and Taxes*, 202, quoting 2 *Mackintosh*, 433, appendix.

on occasion, sent a message to the House to allay if possible the agitation which was going on there over the subject of monopolies. It gave satisfaction. "Understanding that divers patents" so ran the message, "which she had granted had been grievous to her subjects, some should be presently repealed, some superseded, and none put in execution but such as should first have a trial according to the law for the good of the people."<sup>1</sup> Thus was this means of indirect taxation by the crown done away with, until the time when James I, putting his clumsy shoulder to the wheel, should seek to introduce it again.

Toward the close of the reign of Elizabeth there was another evidence of the growing realization on the part of the commons that their powers were not to be tampered with. In this instance, the vindication was not against the prerogative of the sovereign, but against an arrogation of power on the part of the House of Lords. The incident was based upon the decreasing liberality of the commons in the years after the Armada. They had risen

Commons  
assert their  
right to  
originate  
money  
bills, 1593

<sup>1</sup> Taswell-Langmead, *Eng. Const. Hist.* 377, quoting 4 *Parl. Hist.* 480.

nobly to the defense of the nation against the peril, but, with the passing of it, their generosity had faded. In 1593, it was represented that, though the queen had spent upon the war some £1,030,000 of her own, the grants of the commons persisted in being inadequate. A message was sent down from the lords which remarked upon the need for a supply and requested the appointment of a committee of conference. Sir Robert Cecil, reporting from the committee, stated that the lords would assent to no smaller grant than three entire subsidies.<sup>1</sup> The commons, on the other hand, had shown a disposition to grant no more than two. Francis Bacon stated the issue. He yielded to the subsidy, "but disliked," he said, "that this house should join with the upper house in granting it. For the custom and privilege of this house hath always been, first to make offer of the subsidies from hence, then to the upper house; except it were that they present a bill unto this house, with desire of our assent thereto, and then to send it up

<sup>1</sup> The subsidy at this time, by a conservative estimate, amounted probably to £80,000, making the demand equal to £240,000.

again."<sup>1</sup> The commons refused to have further conference with the lords, so determined were they to vindicate their right to originate money bills, by the vote 217 to 128. Notwithstanding this scrupulous adherence to principle, they accepted the suggestion and came forward with a grant of three subsidies, six tenths and six fifteenths.

The death of Queen Elizabeth in 1603, brought to an end the Tudor period and cleared the throne for James Stuart. The Tudor era was one which can be passed lightly over in a strict account of progress toward parliamentary supremacy in taxation. In such a study the period of the Tudors is a bywater. Yet the fact that the principles enunciated in the years prior to their accession stayed alive despite the attacks of Tudor subtlety, points to a vitality sufficient to down the Stuarts, and to establish permanent parliamentary control over the laying of taxes.

<sup>1</sup> 1 Hallam, *Const. Hist. Eng.* 375, quoting D'Ewes, 486.

## VII

### THE STUARTS: 1603-1689

Divine  
right as  
against  
Parlia-  
mentary  
supremacy

THE theory of divine right, by which the Stuarts laid claim to a sovereignty as irresponsible as it was far-reaching, in practice came into direct conflict with another theory which had been taking shape for some four centuries, the supremacy of Parliament. In the field of taxation the issue is scarcely less apparent. Parliament asserted the supremacy of its will over all kinds of taxes, indirect as well as direct. The crown, on the other hand, hesitating to close with the representatives of the people over a question of their authority in direct taxation, maintained that unchecked royal power extended to indirect taxes, including duties at the ports. Furthermore, the crown, whenever occasion arose, sought to elude the hold of Parliament upon direct taxation, by resorting to the familiar resources of benevolences and the sale of monopolies, and at last to the levy of ship money.

With the issue so direct, the great question was that of strength. Should the crown with its array of adherents, upholding as their ideal the perfect exercise of the royal prerogative, prove itself stronger than the House of Commons? Or were the commons to prevail, standing for the principle that the representatives of the people sitting in Parliament should have complete control over the public purse?

James Stuart, swollen with intellectual pride, James I  
was, according to the Duc de Sully, "the wisest 1603-1625  
fool in Europe." Worse than his vanity were his unsteadiness and his insincerity, traceable, perhaps, to the Italian-Gallic stock whence he was bred.<sup>1</sup> Divine right, a doctrine by its nature offensive to Englishmen, was in him doubly hateful because he was not born king, but was proclaimed by the Council, an act ratified, however, by popular voice, and subsequently acquiesced in by Parliament.<sup>2</sup> In the matter of religion, he was not more agreeable; suspected at times of plots to further Roman Catholicism, he assumed toward the Puritans especial animosity, they standing in his mind

<sup>1</sup> Gneist. *Const. Hist. Eng.* 546.

<sup>2</sup> Taswell-Langmead, *Eng. Const. Hist.* 177.

not so much as preachers of religion as propagandists of republicanism.

James I  
dictates  
the com-  
position of  
the Com-  
mons, 1604

He wasted no time in getting things started. In the proclamation by which he summoned his first Parliament, he assumed the power of dictating what manner of men should compose it, and directed that his Court of Chancery should decide whether or not the certificates of election fulfilled the royal conditions, "and if any shall be found to be made contrarie to this proclamation, the same is to be rejected as unlawful and insufficient."<sup>1</sup> The commons, however, shortly after their convening, vindicated their privilege in the case of Goodwin and Fortescue, and succeeded in maintaining thereafter their right to decide upon the legality of returns.<sup>2</sup> In their "Apology of the House of Commons, made to the king, touching their Privileges," nearly at the close of this session, the commons complained against the monopolies possessed by the great trading companies in the face of many statutes

<sup>1</sup> 1 *Parliamentary History of England*, London, 1806, 967, 970.

<sup>2</sup> The case is in 1 *Parl. Hist.* 998-1017. See also Taswell-Langmead, *Eng. Const. Hist.* 267-268.

to the contrary, and the oppressive exercise of the ancient prerogative of purveyance.<sup>1</sup>

In the department of regular taxation, however, James at first adopted a conciliatory attitude. On the 26th June, 1604, James sent to the commons a letter "written with his own hand but corrected as to the spelling," in which he expressed his pleasure as to a subsidy.<sup>2</sup> He stated his confidence in their good-will, assuring them "in the word of a King" that he would "be so far from taking it unkindly, their not offering" to him a subsidy, and that he would "only interpret it to proceed from the care they have, that our people should not have any occasion of distaste." James's letter accomplished for him what may well have been his purpose; the commons immediately granted to him tunnage and poundage for the space of his life.<sup>3</sup>

James  
receives  
tunnage  
and  
poundage  
for life

<sup>1</sup> 1 *Parl. Hist.* 1030-1042.

<sup>2</sup> 1 *Ibid.* 1044-1045.

<sup>3</sup> The rate of this grant of tunnage and poundage: Tunnage, 3 s. on every tun of wine imported, save that on the tun of sweet wines the charge was 6 s., and on the awm of Rhenish, 1 s. Poundage, 1 s. on every 20 s. of goods or merchandise imported or exported, except woollen manufactures; on tin and pewter the charge was 2 s. Wool of denizens, 33 s.



Royal  
poverty

At the two subsequent sessions of 1605-6 and 1606-7 there was constant friction between king and commons, yet there were no very remarkable assertions of royal prerogative or of parliamentary privilege. At the session of 1605, Parliament granted the king three entire subsidies and six fifteenths, designed principally to meet the royal indebtedness, some of which held over since the time of Elizabeth.<sup>1</sup> After the prorogation, James called no session of Parliament until the 9th February, 1609-10.

But James could not meet his obligations with the ordinary revenues of the crown. He was spending between £500,000 and £600,000 a year, and his income was in the neighborhood of £400,000; his annual deficit, therefore, was not far from £150,000.<sup>2</sup> James was obliged to turn elsewhere, and the consequence of his action was the famous Bate Case, the decision in which was a step toward freeing the king from parliamentary control over his revenues.

In 1603, in answer to the agitation against

4 d. on the sack or 240 woolfells and £3, 6 s., 8 d. on the last of hides. — 1 *Parl. Hist.* 1046.

<sup>1</sup> 1 *Parl. Hist.* 1069-1070.

<sup>2</sup> Trevelyan, *England Under the Stuarts*, 107.

the great monopolies, an Eastern trading company, known as the Levant Company, surrendered its charter. This company, amongst other privileges, had enjoyed the right of collecting a duty on currants from other merchants trading in them, and paid to the crown in return for the franchise £4,000 a year. When, therefore, the company yielded up its charter, the crown was the loser by £4,000 annually. In order to make up for the loss, the crown itself proceeded to lay a duty on currants.<sup>1</sup> In 1605, the Levant Company again received a charter, but James levied upon it, nevertheless, his duty on currants, the rate being five shillings on the hundred-weight over and above that granted to him by Parliament in its tunnage and poundage bill. It was a merchant of the Levant Company, John Bate, who raised the question of the legality of the imposition. The case was taken to the Court of Exchequer for decision. Had the barons confined themselves to the strict laws of the matter, there would not have been great ground for objection to their decision. Precedent drawn from the time of the Tudors and stat-

The Bate  
Case

<sup>1</sup> Medley, *Eng. Const. Hist.* 235.

utes of the same period, were capable of being brought forward in a fair adjudication of the case, and would have substantiated the contention of the crown, thus returning customs exactions, nearly to the situation of 1300.<sup>1</sup> The fact that the four barons decided the case unanimously against John Bate could not, therefore, be reasonably reprehended. But they permitted themselves to slip off into philosophical generalizations which struck the people as absolutist in tenor.

Opinions  
of the  
Barons  
in the  
Bate Case

"It seemeth to me strange," says Baron Clarke in his opinion, "that any subjects would contend with the King in this high point of prerogative. . . . As it is not a kingdom without subjects and government, so he is not a king without revenues. . . . The revenue of the Crown is the very essential part of the Crown, and he who rendeth that from the king pulleth also his crown from his head, for it cannot be separated from the crown." He proceeded to advance the opinion that the Statute of Edward III<sup>2</sup> which prohibited to

<sup>1</sup> Prothero, *Statutes and Constitutional Documents*, 1559-1625, lxxv.

<sup>2</sup> Stat. 45 Edw. III, cap. 4.

the crown the right of levying new impositions on wool, woolfells, and leather, and which provided that there be only imposed "the custom and subsidy granted to the king," had no effect in the present instance, because it extended to Edward III alone, "and shall not bind his successors, for it is a principal part of the Crown of England which the King cannot diminish."

The opinion of Chief Baron Fleming was scarcely less sweeping. "The King's power is double," he said, "ordinary and absolute. . . . That of the ordinary is for the profit of particular subjects, for the execution of civil justice . . . in the ordinary courts, and nominated . . . with us the common law; and these laws cannot be changed without Parliament. . . . The absolute power of the king is not that which is converted or executed to private use, . . . but is only that which is applied to the general benefit of the people. . . . This power is not guided by the rules which direct only at the common law, and is most properly named policy and government. . . . The matter in question is material matter of state, and ought to be ruled by the rules of

policy, and if it be so, the king hath done well to execute his extraordinary power. All customs, be they old or new, are no other but the effects and issues of trades and commerce with foreign nations; but all commerce and affairs with foreigners . . . are made by the absolute power of the king; and he who hath power of causes hath power also of effects."<sup>1</sup>

The position of Parliament

Parliament took its stand on the subject of the impositions even before the decision was published. In the Petition of Grievances sent up by the commons at the end of the session of 1606, a list which contained so many complaints that James remarked that "they had sent an oyes through the nation to find them," the plea was made that no such duty could be demanded legally without the consent of Parliament. The decision was announced to them when they reassembled in November 1606, but they took no action and for a time the matter rested.

But it was James himself who, in his characteristic tactless obstinacy, forced the issue. On the 29th July, 1608, taking advantage of

<sup>1</sup> The case is reported in Prothero, *Stat. and Const. Doc.* 340-342.

the Bate decision, he published under the authority of the Great Seal his Book of Rates, which laid heavy duties upon almost all articles of merchandise, "to be forever hereafter paid to the king and his successors on pain of his displeasure."<sup>1</sup> The statement of James's own views on the subject could not be more clearly put than he himself expressed them in the commission for the levy of the impositions addressed to the Earl of Salisbury, Treasurer of England. "This special power and prerogative," he asserted, "(amongst many others) hath both by men of understanding in all ages and by the laws of all nations been yielded and acknowledged to be proper and inherent in the persons of princes, that they may according to their several occasions raise to themselves such fit and competent means by levying of customs and impositions upon merchandise transported out of their kingdom or brought into their dominions . . . as to their wisdoms and discretions may seem convenient."<sup>2</sup>

Even with the money thus obtained, James

<sup>1</sup> *2 State Trials*, 481.

<sup>2</sup> Prothero, *Stat. and Const. Doc.* 354.

The Book of Rates published under decision in the Bate Case, 1608

Remonstrance  
from the  
Commons,  
1609-10

was obliged at last after a lapse of nearly two years and a half to turn to Parliament. He summoned it for the 9th February 1609-10. The commons, almost unanimously opposed to the exercise of the royal prerogative in the matter of the imposition, came prepared to dispute the decision in the Bate Case. The discussion, carried on in the face of a royal prohibition, was managed by Hakewill, Yelverton, and Whitelocke.<sup>1</sup> The upshot was a remonstrance in which the commons reminded the king that "the policy and constitution of this your kingdom appropriates unto the kings of this realm, with the assent of the Parliament, as well the sovereign power of making laws as that of taxing or imposing upon the subjects' goods or merchandises wherein they have justly such a property as may not without their consent, be altered or changed." Further, they pointed to the former occasions when the commons had complained in Parliament of similar impositions, and upon which redress was forthcoming. Reference was made to the action of "famous

<sup>1</sup> The arguments of Hakewill and Whitelocke are given in detail in Prothero, *Stat. and Const. Doc.* 342-353.

kings," who "agreed that this old fundamental right should be further declared and established by act of Parliament, wherein it is provided that no such charges should ever be laid upon the people without their common consent, as may appear by sundry records of former times." They went on to say, "We, therefore, your Majesty's most humble Commons assembled in Parliament, following the examples of this worthy case of our ancestors, and out of a duty to those for whom we serve, finding that your Majesty, without advice or consent of Parliament, hath lately, in time of peace, set both greater impositions, and far more in number than any of your noble ancestors did in time of war, have with all humility presumed to present this most just and necessary petition unto your Majesty: That all impositions set without the assent of Parliament may be quite abolished and taken away; and that your Majesty, in imitation likewise of your noble progenitors, will be pleased that a law may be made during this session of Parliament to declare that all impositions set or to be set, upon your people, their goods and merchandises, save only by common assent

in the Parliament, are and shall be void."<sup>1</sup> The outcome was unsatisfactory. A bill framed to prohibit further impositions than those already in existence, was passed by the House of Commons, but was cast out in the upper chamber. The king was still able to cover himself with the decision in the Bate Case.

Cowel's  
"Inter-  
preter"

The attitude of James toward a book "lately published by one Doctor Cowel" and esteemed to "contain certain matters of scandal and offence toward the high court of Parliament,"<sup>2</sup> all but brought him into active conflict with the commons. This publication called "The Interpreter" contained a defense of the royal prerogative in such terms as greatly to offend the power of Parliament. Doctor Cowel had this to say under the head of "Subsidy:"

"... A tax or tribute assessed by Parliament, and granted by the Commons to be levied of every subject according to the value of his lands or goods, after the rate of 4s. in

<sup>1</sup> Taswell-Langmead, *Eng. Const. Hist.* 395, quoting from Petyt, *Jus Parliamentum*, 322, 323.

<sup>2</sup> 1 *Parl. Hist.* 1122.

the pound for land and 2s. 8d. for goods, as it is not commonly used at this day. Some hold opinion that this subsidy is granted by the subject to the Prince, in recompense or consideration, that whereas the Prince of his absolute power might make laws of himself, he doth of favor admit the consent of his subjects therein, that all things in their own confession may be done with the greater indifferency."<sup>1</sup>

King James had been thoughtless enough to let fall words of commendation for the book, and his approval was followed by a request from the commons for a conference with the lords. James, however, wisely withdrew from his position and issued a proclamation prohibiting the further circulation of the work and recalling the copies already issued. Thus did the storm blow over.

At this same session of Parliament, James, through the Lord Treasurer, offered to accept a composition for the incidents of feudal tenure, including the right of purveyance. By this so-called Great Contract, Parliament was to provide for an annual payment to the

The  
"Great  
Contract,"  
1610

<sup>1</sup> Prothero, *Stat. and Const. Doc.* 411.



king of £200,000. But the idea, which at first was distasteful to the commons, shortly became equally out of favor with the king. The amount of money required seemed excessive, and the commons feared that it might make the king independent of them. The king, on the other hand, arrived ultimately at the conclusion that by careful manipulation he could readily increase his income to a sum larger than that stated in the Great Contract. Final consideration was put over to the session of Parliament called for the 16th October following. At the last moment, however, when an agreement seemed by no means hopeless, a religious misunderstanding intervened, and the negotiations fell through.

The matter of a subsidy was treated with somewhat greater favor, though with small generosity. Parliament granted the king one entire subsidy and one fifteenth and tenth.<sup>1</sup> Parliament was dissolved 9th February, 1611, and for three years James tried to carry on his government without it.

James's attempt at absolutism was not a financial success; a court which was as extrava-

<sup>1</sup> 1 *Parl. Hist.* 1133.

gant as it was dissolute helped him increase his deficit; he ran behind about £200,000 a year, notwithstanding the fact that he set in motion all the machinery of petty extortion that he dared. He tried to force loans on the security of his privy seal but frequently met with refusal from which there was no appeal. The jurisdiction of the Star Chamber was used as a means to lay fines which were usually unjust and always excessive. He sold peerages and raised money on the crown lands, and induced the French king and the Dutch to pay up old debts owing to England.

His enormous annual deficit forced him in 1614 to summon his second Parliament. It came with a great and active majority lined up against the king. It speedily passed by a unanimous vote a resolution against the king's right of imposing taxes without the consent of Parliament, and demanded a conference on that subject with the House of Lords;<sup>1</sup> the lords, however, turned to the judges hoping to obtain from them enlightenment on the legal points involved, but the

Petty  
extortion  
after the  
dissolution  
of Parlia-  
ment

James's  
second  
Parlia-  
ment,  
1614,  
known  
as the  
"Addled  
Parlia-  
ment"

<sup>1</sup> 1 *Parl. Hist.* 1159.

judges, by the words of Chief Justice Coke, refused to render an extra-judicial opinion. The conference was then refused. The king, becoming impatient at the delay of the commons in accomplishing the purpose for which he had summoned them to Parliament, with his usual failure to adapt himself to circumstances, sent a message to the House threatening a dissolution of Parliament unless procedure were immediately taken in the direction of granting supplies.<sup>1</sup> The commons met the issue squarely; they said that they were determined to conclude the matter of the impositions before granting a supply. On the 7th of June, two months and two days after the date upon which it had been convened, James redeemed his word and dissolved Parliament. It had not passed a single bill and thus earned the title by which it is known to history, — the "Addled" Parliament. But it had succeeded in maintaining its principle of making supply wait upon redress of grievances, and some of its members had shot barbed shafts at the king, wherefore James locked up those who had aimed most surely.

<sup>1</sup> 1 *Parl. Hist.* 1166.

With the hope gone of securing a grant, James had to return to his old courses of obtaining income. Forced loans, monopolies, heavy fines, feudal payments rigorously exacted, and the systematic extortion of benevolences, figured in his programme. The Council sent out orders to all the sheriffs and magistrates to send in contributions from all men of ability to pay; to those who refused, suggestions were made of impending evil. The judges of assize were especially urged to recommend payments. The benevolences netted less than £43,000 for the three years during which they were made.<sup>1</sup>

Resort to  
extortion

But the nation did not submit tamely. Several counties sent up protests against the demand, recalling in defense of their position the Statute of Richard III which forbade the levying of "exactions, called benevolences."

The refusal of Oliver St. John to the request for a benevolence by the mayor of Marlborough, brought him into immediate conflict with the king. His written reply to the mayor maintained the illegality of the demand on the ground that it was contrary to Magna

Case of  
Oliver  
St. John

<sup>1</sup> 2 Gardiner, *Hist. Eng.* [1603-1616] 172.

Carta and to the Statute of Richard III. He further charged the king with breaking his coronation oath, and declared that all who paid the benevolence were incriminated with him. He was haled before the Star Chamber and sentenced by it to pay a fine of £5,000 and to imprisonment during the king's pleasure. Thus it was that James tried to rule without a Parliament.

James's  
third Par-  
liament,  
1620-21

But the rule could not long continue. James summoned his third Parliament for the 30th January, 1620-21. He addressed both Houses in a conciliatory manner, hopefully and with many promises. "For you to hunt after grievances," he said, "to the prejudice of your king and yourselves, is not the errand: deal with me as I deserve at your hands; I will leave nothing undone that becomes a just king, if you deal with me accordingly."<sup>1</sup> The commons were in a good temper and a reconciliation seemed far more likely to eventuate than a struggle.

As for the royal advice about grievances, the commons were slow to take it. When, shortly after the beginning of the session, it

<sup>1</sup> 1 *Parl. Hist.* 1179-1180.

was moved that the House proceed to the consideration of a supply, it was stated that supply and redress of grievances should go "hand in hand together," that they were "as twins; to go together and have no precedence."<sup>1</sup> It was resolved that the business of the supply be not decided independently of a consideration of grievances and of a petition to the king for freedom of speech, thus recalling the imprisonment of members in 1614 at the time of the dissolution of the Addled Parliament.

Supply  
waits upon  
redress of  
grievances

High in the list of grievances was the granting of monopolies. Patents of monopoly subserved a number of diverse purposes, some of which were entirely legitimate. Objection could not be made to restrictions in the sale of certain commodities such as liquors and explosives, nor to the assurance given to an inventor that he had an exclusive right to profits accruing from his invention. But James was free with his grants of monopoly for the enrichment of his courtiers and himself. Parliament laid by the heels the monopolists who had most abused their privileges, and

<sup>1</sup> 1 *Parl. Hist.* 1187.

Revival of  
impeach-  
ment by  
the  
Commons

impeached and condemned Sir Giles Mom-  
pesson and Sir Francis Mitchell.<sup>1</sup>

Granting  
of a supply

Before the judgment was given, however,  
but not before it was clearly discernible what  
was to be the trend of events, the commons  
set themselves to the consideration of a supply  
bill and on the 18th March passed it unani-  
mously. It provided for two entire subsidies.  
"In the midst of their inquiries into public  
grievances, the commons had thought fit to  
consider the necessities of the State and grant  
the king a supply."<sup>2</sup>

The major part of the session was spent in  
reforming abuses, both by impeaching the  
officials responsible for them, and by framing  
legislation for their correction. Chief amongst  
those who fell under condemnation at the bar  
of the House of Lords was Lord Francis  
Bacon, Lord Chancellor of England, convicted  
of bribery. King James in the early part of

<sup>1</sup> This was "the revival of the ancient right of Parliamen-  
tary impeachment — the solemn accusation of an individual  
by the Commons at the bar of the Lords — which had lain  
dormant since the impeachment of the Duke of Suffolk in  
1449." For further details see Taswell-Langmead, *Eng.  
Const. Hist.* 409 et seq.

<sup>2</sup> 1 *Parl. Hist.* 1208.

the session seemed not out of sympathy with  
these efforts to reform the administration,  
but as time wore on and the commons still  
busied themselves with investigations of offi-  
cial misconduct, he wearied, and on the 28th  
May, the Lord Treasurer declared to the  
lords the king's determination to adjourn Par-  
liament. Two of the five reasons assigned for  
the adjournment were these: "For that the  
profits of his Majesty's revenues are, as it  
were, at a stand;" and "The omission of the  
State."<sup>1</sup> A week later, after great complaint by  
the commons, the session was adjourned to re-  
assemble on the 14th November. Through-  
out the four months during which it had sat, no  
complaint had been registered against the im-  
positions at the outports. Apparently the com-  
mons were willing for the moment to let them  
rest, or else, as is more likely, were quite un-  
mindful of them.

James in  
a temper  
adjourns  
Parlia-  
ment

Parliament met on the 20th November for  
its final session. Lord Treasurer Cranfield  
reported that the exchequer was depleted, that  
the two subsidies which had been granted the  
previous March had been spent in furthering

<sup>1</sup> 1 *Parl. Hist.* 1262.

Dilatory  
action on  
a subsidy

the interests of James's son-in-law, Frederic, Elector Palatine, and "that the business now in hand required a great and speedy supply."<sup>1</sup> It was understood that the cost of maintaining an army in the Palatinate would be not far from £900,000 a year. The Lord Treasurer wished "that the Commons would so handle this business as to make his Majesty in love with the Parliaments."

But they took some time to consider it. At the end of the first week, the commons resolved in committee of the whole house upon a single subsidy, which, since it was to be levied doubly upon papists, would provide some £100,000 for the prosecution of war in the Palatine.<sup>2</sup> That was as near an actual grant as the commons came during the session. On the 1st December, they fell into a conflict with the king over matters of privilege, which had its rise in the imprisonment of Sir Edwin Sandys during the last recess of Parliament, presumably for utterances made in the House. There were petitions to James and replies from him, culminating in a remarkable Protestation asserting the right of free speech in the

<sup>1</sup> 1 *Parl. Hist.* 1300-1301.

<sup>2</sup> 1 *Ibid.* 1316-1317.

House.<sup>1</sup> On the day of the presentation of this Protestation, the 18th December, James adjourned Parliament to the 8th February; he then sent for the Journal of the House of Commons and tore from it the objectionable entry with his own hand. In the stress of these events, the proposed subsidy was allowed to slip out of mind; only did the lords propose a meeting with the commons to consider a supply, and this came to naught. On the 6th January, 1621-22, James saw fit not to await the reassembling of Parliament, but issued a proclamation of dissolution in which he denounced those who had questioned his prerogatives in the House of Commons as "ill-tempered spirits." Then he committed to prison such of them as he regarded as being most hostile, amongst whom were Sir Edward Coke, Pym, Selden, and Mallory.<sup>2</sup>

James convened his last Parliament on the 19th February, 1623-24. In the interval which had elapsed since the dissolution, James recovered his conciliatory attitude toward the commons. The plan of marrying the Prince of Wales, the young Prince Charles, to the

James's  
last Par-  
liament,  
1623-24

<sup>1</sup> 1 *Parl. Hist.* 1361-1363.

<sup>2</sup> 1 *Ibid.* 1366-1371.



Supply  
granted  
for the  
Palatine  
war

Infanta of Spain, had been given up, and thus Englishmen were relieved of what to them had been a pro-popish plot, and had been deprecated again and again as the odious Spanish Match. The programme with respect to the Palatinate favored by the king was that favored by the commons, and the reign of James seemed to be approaching a happy conclusion. The commons came forward with a grant of three subsidies and three fifteenths and tenths, providing a somewhat greater sum than £300,000.<sup>1</sup> The money was voted on the condition that, in order to insure its application to the naval and military establishments, it be paid into the hands of commissioners appointed by the commons, and be expended by them upon direction of the council of war. The sympathy existing between king and Parliament was further exhibited in the successful passage of an act forbidding monopolies in the sale of any merchandise or in practicing any trade, the only legislative act of constructive importance in his reign.<sup>2</sup> Parliament was dissolved on the 29th May, 1624.

<sup>1</sup> 1 *Parl. Hist.* 1487-1488.

<sup>2</sup> 1 *Hallam, Const. Hist. Eng.* 508, 509.

Less than a year later King James died. Apparently at the end of his reign he was learning wisdom for he was beginning to understand Parliament. He left his crown to the keeping of a son who had in no wise profited by the father's experience. Charles I, brought up in an atmosphere of divine right, was predisposed to pursue that theory to the end. But worse than that, in arguing his melancholy destiny, was his faithlessness. An odious policy executed without respect for truth brought him at last to death outside his palace of Whitehall.

Death of  
James I,  
27th  
March,  
1625

The first Parliament of Charles I recalls vividly the mid-reign experiences of James. It convened on the 18th June, 1625, and was met with a request for a large and unconditional grant with which to prosecute the war which Charles had inherited from his father. The commons, however, were careful; they looked rather for a solid establishment of government at home than for a war abroad. Breaking the habit of two centuries, they offered Charles tunnage and poundage for a year instead of the term of his life, a measure which, because of lack of precedent, was rejected in the House of Lords; and granted

First Par-  
liament of  
Charles

Worry  
about the  
supply

only two subsidies.<sup>1</sup> On the 10th August, the chancellor delivered a message to the commons from the king. He desired "a present answer about his supply: If not, he will take care of their healths more than they themselves, and make as good a shift for his present occasions as he could."<sup>2</sup> The House spent the rest of the day debating the matter, and on the next proceeded in the consideration of grievances, postponing the supply. Delay the king would not brook; perceiving that the commons were bent upon a redress of grievances before the granting of further aid, and because in the debates they had presumed "to reflect upon some great persons near himself," on the 12th August he dissolved Parliament,<sup>3</sup> and looked to his privy seal as a means of revenue.

His second  
Parliament.  
Buckingham

Six months later, on the 6th February, 1625-26, Charles opened his second Parliament and met with no better success. The commons did not consider immediately the question of a supply, but to the immense irritation of the king, proceeded to inquire into

<sup>1</sup> 2 *Parl. Hist.* 6.

<sup>3</sup> 2 *Ibid.* 35-37.

<sup>2</sup> 2 *Ibid.* 33.

the conduct of the Duke of Buckingham, the favorite of Charles. He sent a message to the commons saying that he would "not allow any of his servants to be questioned amongst them, much less such as are of eminent place and near unto him." But the chief significance of his message was in its conclusion. "I wish you would hasten my supply," so it ran, "or else it will be worse for yourselves; for if any ill happen, I think I shall be the last that shall feel it."<sup>1</sup> The commons replied with a grant of three subsidies and three fifteenths, but the conditions were such as to make it almost worse for Charles than no grant at all. The bill was not to be brought in until the king should have given answer to their list of grievances, and among the grievances the Duke of Buckingham was chief.<sup>2</sup> Later a fourth subsidy was added and a movement was put on foot to give Charles tunnage and poundage for life; but in the bill it was specified that a remonstrance should be drawn up against his taking those duties without the previous consent of Parliament.<sup>3</sup> Then the

A grant  
with hard  
conditions

<sup>1</sup> 2 *Parl. Hist.* 49, 50.

<sup>3</sup> 2 *Ibid.* 100, 101.

<sup>2</sup> 2 *Ibid.* 56.

commons went on with their formal impeachment of Buckingham. But before the matter was settled, and consequently before the Commons had made final grants of the promised subsidies, Charles, in the hope of relieving the desperate plight of his favorite, dissolved Parliament, on the 15th June.

Forced  
loans at  
the rating  
of a  
subsidy

The dissolution left Charles without the means with which to carry on the proposed war with Spain. He turned again to old expedients; he forced loans, exacted benevolences, and suspended penal laws for a consideration. The loans took the form of a general levy according to the well-known rate of the subsidy and were thus in effect assessments of a general tax by the arbitrary power of the crown. Of great importance in the light of subsequent history, was the requisition made upon the seaport towns for ships armed and equipped, the precursor of the demand for ship money. Imprisonment, impressment into the royal navy, the quartering of soldiers upon the inhabitants, the dismissal from offices held of the crown, were the several rewards of those sufficiently courageous to stand by the principle that taxes be laid only

by the assent of Parliament.<sup>1</sup> By an order in Council it was declared, "that all customs, duties, and imposts on all goods and merchandizes exported and imported, which, for many ages had been continued, and esteemed a principal and necessary part of the revenue of the crown, should be levied and paid." The hope was expressed that these levies "might receive an absolute settlement by Parliament," when that body should again assemble.<sup>2</sup>

Not being content with the financial difficulties incident to the war with Spain, Charles, at the suggestion of Buckingham, slipped into a war with France. Buckingham led an expedition to the Isle of Rhé, met with disaster and ignominy, and succeeded in using up the ready money of the king. Charles had to call his third Parliament in order to obtain supplies. It met 17th March, 1627-28. The king attempted to propitiate the commons by releasing the prisoners whom he still held for refusing to meet the demand for the general

Charles's  
third Par-  
liament,  
1627-28

<sup>1</sup> Arbitrary imprisonment led to the suspension of the right to secure a writ of *habeas corpus*, by direct command and peculiar power of the king. *Vid.* Darnel's Case in Taswell-Langmead, *Eng. Const. Hist.* 425, 426.

<sup>2</sup> *2 Parl. Hist.* 207, 208.

Threats of  
non-Par-  
liamentary  
exaction

loan. In his opening speech, Charles took the wrong tack. "There is none here," he said, "but knows that common danger is the cause of this Parliament, and that supply at this time is the chief end of it. . . . If you, (which God forbid) should not do your duties in contributing what the State at this time needs, I must in discharge of my conscience, use those other means which God hath put into my hands, to save that which the follies of some particular men may otherwise hazard to lose."<sup>1</sup> Nor was this bold assertion of the divine right of a king to put his hand in the pockets of his subjects enough. The lord keeper said in addition, "This way (of obtaining a supply), as his Majesty hath told you, he hath chosen, not as the only way, but as the fittest; not as destitute of others, but as most agreeable to the goodness of his own most gracious disposition, and to the desire and weal of his people. If this be deferred, necessity and the sword of the enemy will make way to others. Remember his Majesty's admonition: I say, remember it."<sup>2</sup>

The House immediately set itself to the

<sup>1</sup> 2 *Parl. Hist.* 213.

<sup>2</sup> 2 *Ibid.* 221.

consideration of grievances, chief amongst which were "raising money by loans, by benevolences, and privy seals: and what was too fresh in memory, the imprisonment of certain gentlemen who refused to lend."<sup>1</sup> The matter of a supply was debated, but passed by in favor of the grievances. On the 3rd April, the commons agreed unanimously to certain highly significant resolutions against the powers assumed by the king. "No freeman ought to be committed, or detained in prison, or otherwise restrained," they said, "by command of the king, or the Privy Council, or any other," except for lawful cause expressed in a lawful warrant; and "that the ancient and undoubted right of every freeman is, that he hath a full and absolute property in his goods and estate; and that no tax, tallage, loan, benevolence, or other like charge, ought to be commanded or levied by the king or his ministers, without common assent of Parliament."<sup>2</sup>

Grievances  
have pre-  
cedence

Denuncia-  
tion of  
extortions

For the space of two months the commons and the House of Lords engaged themselves in conference and separately in the consid-

<sup>1</sup> 2 *Parl. Hist.* 230.

<sup>2</sup> 2 *Ibid.* 259-260.



eration of a petition defining the rights asserted in the resolutions. On the part of the commons the chief advocates were Selden, Littleton, and Digges; Sir Edward Coke, whose unwillingness to bend the judicial knee to King James had procured his dismissal long since from the chief-justiceship; and Noy, the genius who was shortly to turn against the Commons and in his invention of ship money furnish a means whereby to lay taxes without parliamentary assent. The interest of the crown was defended by attorney-general Heath and Sergeant Ashley. The king was in a dilemma; he could not permit the petition to be brought in, in parliamentary form, and he could not dissolve Parliament without losing five subsidies which the commons had signified their willingness to grant him.<sup>1</sup> He therefore tried to steer a middle course; he offered to Parliament his royal word not to imprison unjustly and expressed his willingness to confirm the charters. Coke, however, insisted upon a specific statement of issues; any such hazy settlement of difficulties as the king proposed was unlikely to be permanent; definiteness was essential. To

<sup>1</sup> 2 *Parl. Hist.* 274, 277, 278.

that end he proposed the drawing up of a Petition of Right.

When the instrument was at last drawn up, it was sent to the House of Lords. The lords attempted to introduce an amendment designed "to leave entire that sovereign power," as the proposed change itself ran, "wherewith your Majesty is trusted for the protection, safety and happiness of your people;"<sup>1</sup> but the commons would have none of it, and at last the lords yielded their assent. The king at first gave a cumbersome, evasive answer to the petition which was in reality no answer at all,<sup>2</sup> and roused thereby a storm of indignation, which exhibited itself in a movement to censure Buckingham. This the king averted by signing the Petition of Right in the usual manner, and received in consequence his five subsidies.<sup>3</sup>

The Petition which thus became a regularly passed Act of Parliament, is of transcendent importance in the development of the control of the people over the public purse.<sup>4</sup> In

<sup>1</sup> 2 *Parl. Hist.* 355.

<sup>2</sup> 2 *Ibid.* 377.

<sup>3</sup> 2 *Ibid.* 409, 410.

<sup>4</sup> The sections which concern taxation:—

Humbly show unto our Sovereign Lord the King, the Lords Spiritual and Temporal, and Commons in Parliament as-



The statutes cited in the Petition

terms absolutely unequivocal, it asserts that "your subjects have inherited this freedom, that they should not be compelled to contribute to any tax, tallage, aid, or other like

sembled, that whereas it is declared and enacted by a statute made in the reign of King Edward the First, commonly called, *Statutum de tallagio non concedendo*, that no tallage or aid shall be laid or levied by the king or his heirs in this realm, without the goodwill and assent of the Archbishops, Bishops, Earls, Barons, Knights, Burgesses, and other freemen of the commonalty of this realm; and by authority of Parliament holden in the five and twentieth year of the reign of King Edward the Third, it is declared and enacted, that from thenceforth no person shall be compelled to make any loans to the king against his will, because such loans were against reason and the franchise of the land; and by other laws of this realm it is provided, that none should be charged by any charge or imposition, called a Benevolence, nor by such like charge, by which the statutes before mentioned, and the other the good laws and statutes of this realm, your subjects have inherited this freedom, that they should not be compelled to contribute to any tax, tallage, aid, or other like charge, not set by common consent in Parliament:

Yet nevertheless, of late divers commissions directed to sundry commissioners in several counties with instructions have issued, by pretext whereof your people have been in divers places assembled, and required to lend certain sums of money unto your Majesty, and many of them upon their refusal so to do, have had an unlawful oath administered unto them, not warrantable by the laws and statutes of this realm, and have been constrained to become bound to make appearance and give attendance before your Privy Council, and in other places; and others of them have been therefore imprisoned,

charge, not set by common consent in Parliament." The statutory sources whence that freedom was inherited are cited in detail. The citations, are, however, ill-taken. *Statutum de tallagio non concedendo* was in all likeli-

confined, and sundry other ways molested and disquieted: and divers other charges have been laid and levied upon your people in several counties, by Lords Lieutenants, Deputy Lieutenants, Commissioners for Musters, Justices of the Peace and others, by command or direction from your Majesty or your privy Council, against the laws and free customs of this realm. . . .

And whereas of late great companies of soldiers and marines have been dispersed into divers counties of the realm, and the inhabitants against their wills have been compelled to receive them into their houses, and there to suffer them to sojourn, against the laws and customs of the realm, and to the great grievance and vexation of the people. . . .

They do therefore humbly pray your most Excellent Majesty, that no man hereafter be compelled to make or yield any gift, loan, benevolence, tax, or such like charge, without common consent by Act of Parliament; and that none be called to make answer, or take such oath, or to give attendance, or be confined, or otherwise molested or disquieted concerning the same, or for refusal thereof; . . . and that your Majesty will be pleased to remove the said soldiers and marines, and that your people may not be burdened in time to come. 2 *Parl. Hist.* 374-6. The Petition of Right may also be found in S. R. Gardiner, *Constitutional Documents of the Puritan Revolution, 1628-1660*, 66-70; Adams and Stephens, *Sel. Doc.* 339-342. Taswell-Langmead, *Eng. Const. Hist.* 430-433.

hood no statute at all, but a chronicler's abstract of Edward I's *Confirmatio Cartarum*, or perhaps an unauthoritative copy of the pardon which was granted to Humfrey Bohun and Roger Bigod at approximately the same time with the Confirmation of the Charters. It is not unlikely that the citation of the statute of the 25th of Edward III was an error; at any rate, the text of the statute has not been discovered,<sup>1</sup> and the date at which it was said to be enacted was at the height of the great plague, a time scarcely adapted to the assertion of a great constitutional principle. But the precise historical foundation upon which Sir Edward Coke and his associates based their charges against the king, is of quite secondary importance. The true value of the Petition of Right lies in this, that Charles I had been obliged to subscribe to a statutory provision by which no man thereafter was to "be compelled to make or yield any gift, loan, benevolence, tax, or such like charge, without common consent by Act of Parliament." That was indeed supremely important.

But the language of the Petition of Right

<sup>1</sup> Gardiner, *Const. Doc.* 66, note 2.

might reasonably be taken to refer only to internal taxes and that the matter of customs duties, the charges upon merchandise at the outports, was left still in the air. Protests had indeed been made against the exaction of these duties by the crown, especially during the reign of James in the great agitation over the Book of Rates, but no statute had been passed providing definitely for parliamentary control. To that end, the commons delayed the passage of a bill which gave the king tunnage and poundage for life, pending the acceptance by him of a remonstrance against impositions. The remonstrance as framed by the commons declared that "there ought not any imposition to be laid upon the goods of merchants, exported or imported, *without the common consent by Act of Parliament.*"<sup>1</sup> It further made assertion that the laying of impositions at the outports was contrary to the Petition of Right. The king's attitude was decisive; before the remonstrance was handed to him, he evaded the issue by proroguing Parliament. Never, so he said, would he give away tunnage and poundage; he must

The  
Petition of  
Right and  
customs  
duties

<sup>1</sup> 2 *Parl. Hist.* 432.

needs retain them for himself. The session ended 26th June, 1628.<sup>1</sup>

Tunnage  
and  
poundage

During the six months which elapsed before the reassembling of Parliament, Charles continued to levy tunnage and poundage upon his own authority, relying still upon the decision in the Bate Case for his justification. Several merchants who refused to pay were promptly clapped into prison; among those whose goods were seized for the same reason was Henry Rolles, a member of the House of Commons. The second session of Parliament was called for the 20th January, 1628-29; the commons came together with no pretense of smothering their indignation against the conduct of the king. A number of plans were brought forward as means of rectifying the abuses. The evident determination of the commons to conclude the matter, daunted the king. Summoning both Houses to Whitehall, he renounced the right of levying tunnage and poundage. "It ever was, and still is my meaning," so were his words, "by the gift of my people to enjoy it, and my intention in my speech at the end of the last session was

<sup>1</sup> 2 *Parl. Hist.* 433-434.

not to challenge tunnage and poundage as of right, but *de bene esse*, showing you the necessity, not the right, by which I was to take it until you had granted it to me, assuring myself according to your general professions that you wanted time and not good-will to give it me."<sup>1</sup> For a moment it appeared as though this abandonment of position by the king would end the conflict. Three days after his reception of the Houses at Whitehall, Mr. Secretary Cooke moved the reading of a bill granting him tunnage and poundage for life. But it never passed. The commons were distracted by a question of religious innovation, talked at great length over their religious grievances, and allowed their momentary flush of cordial feeling toward the king to cool. Mr. Secretary Cooke on the two days following that upon which he made his motion regarding tunnage and poundage, delivered messages from Charles urging haste in the consideration of the measure.<sup>2</sup> On the 2nd February, the commons acknowledged the receipt of the messages, but rather than pass a bill satisfactory to the king in this particular,

<sup>1</sup> 2 *Parl. Hist.* 442, 443.

<sup>2</sup> 2 *Ibid.* 449, 453.

they stated their intent to "proceed with religion."<sup>1</sup>

On the 19th February they began a lengthy consideration of the breach of privilege committed against the House of Commons in the seizure of the goods of Henry Rolles, the merchant member of the House, who had refused payment of tunnage and poundage during the recent recess. The officers who had participated in the seizure of his goods were summoned before the commons that they might answer for contempt. The stand was taken against the king on this ground of privilege, instead, as Pym advised, of objecting on the broad constitutional ground that Parliament had not granted the tax. This hostility was too much for the conciliatory spirit which Charles had evinced at the opening of the session. Through Mr. Secretary Cooke, he announced his unwillingness to have his officers questioned, since "what they did was by his own direct command, or by order of the council-board, his Majesty himself being present, and therefore, would not have it divided from his act."<sup>2</sup>

<sup>1</sup> 2 *Parl. Hist.* 454.

<sup>2</sup> 2 *Ibid.* 482.

The question was fought out on the 2nd March, when the commons reassembled after a brief recess. The king, hoping to arrange the difficulty privately with the leaders of the House, ordered the recess to be continued until the 10th March. To this the commons entered vigorous protest; at the putting of the question, the vote was overwhelmingly against adjournment. The speaker, Sir John Finch, in obedience to the royal will, attempted to leave his chair, and thus break up the session; but Holles and Valentine, two members most eager for the consideration of the matters pressing for attention, pushed him back into his seat. Sir John Eliot, who had drawn up three resolutions expressing the mind of the commons on the questions of religion and taxation, read them above the uproar. The speaker and the clerk refused to put the vote and the king's guard was already on its way to make a forcible end to the proceedings. At the moment when the guardsmen were at the door, Holles read the resolutions and they were carried by acclamation. The House then adjourned in a tumult until the 10th March.<sup>1</sup>

Tumult  
in the  
Commons

<sup>1</sup> 2 *Parl. Hist.* 457, 491.



The resolutions were most explicit. The two which concerned the impositions said: "Whosoever shall counsel or advise the taking and levying of the subsidies of tunnage and poundage, not being granted by Parliament, or shall be an actor and instrument therein, shall be likewise reputed an innovator in the government and a capital enemy to this kingdom and commonwealth." And: "If any merchant or other person whatsoever shall voluntarily yield or pay the said subsidies of tunnage and poundage not being granted by Parliament, he shall likewise be reputed a betrayer of the liberty of England, and an enemy to the same."<sup>1</sup>

When the House reconvened on the 10th March, the king dissolved Parliament without further ado. With respect to such of the commons as merited his displeasure he remarked that the vipers amongst them would meet with their rewards.

With the dissolution of his third Parliament, Charles entered upon a new epoch in his reign; and at the conclusion of it, he found that his game had been for too heavy stakes,

<sup>1</sup> Gardiner, *Const. Doc.* 82, 83; 2 *Parl. Hist.* 491.

and that he had lost. For eleven years he did without a Parliament. He began by issuing a Declaration addressed to his "loving subjects" in which he told the history of the late session from his own point of view, — that he was in extreme need of money with which to meet the necessities of England and relieve the "miserable afflicted state" of Protestants abroad, that Parliament had proved itself intractable, and had greatly delayed, contrary to all precedent, in the matter of tunnage and poundage; not only that, but upon his graciously yielding to Parliament the power of granting him tunnage and poundage, it had raised up still another cause for delay in the case of Henry Holles.<sup>1</sup> In a proclamation issued two weeks later he plainly exhibited his intention to rule without a Parliament; "the calling, continuing, and dissolving of them," he said, "being always in the King's own power. And his Majesty shall be more inclinable to meet in Parliament again when his people shall see more clearly into his intents and actions, when such as have bred

Charles's  
eleven  
years  
without  
Parlia-  
ment,  
1629-40

<sup>1</sup> "The king's declaration of the causes of the late dissolution." Gardiner, *Const. Doc.* 83-99; 2 *Parl. Hist.* 492-504.



this interruption shall receive their condign punishment." <sup>1</sup>

His  
financial  
expedients

He imprisoned accordingly Holles, Strode, Sir John Eliot and others whom he included amongst the vipers of the commons, and removed such of them to the Tower as were able to sue out their writs of habeas corpus, in order that he might thus elude the service of the writs. But imprisonment was scarcely a means of relief to the king's financial exigencies. He turned to expedients which were exceedingly oppressive, and most of them clearly illegal. He rigorously extorted tunnage and poundage by the arbitrary authority of the crown; he reëstablished the monopolies abolished under James I, and applied them to nearly every article in common use; he revived laws long since dead and applied them stringently for the sake of their fines; he revived forest legislation and increased the limits of the royal woodlands, mulcting the owners of adjoining property for encroachment; he searched titles of estates for defects which would make them liable to reversion to the crown; he went back to the old practice

<sup>1</sup> 2 *Parl. Hist.* 525.

of compulsory knighthood for those who had £40 or more in lands or rents.

But the supreme grievance was the extortion of ship money. Sir William Noy, lately leader in the commons in defense of popular power against royal prerogative, now become by the grace of the king attorney-general and a chief supporter of that same royal prerogative, shut himself up in the Tower for some days that he might better consult the ancient authorities. "Shaking off the dust of ages from parchments in the Tower," says Hallam, "this man of venal diligence and prostituted learning discovered that the seaports and even maritime counties had in early times been sometimes called upon to furnish ships for the public service; nay there were instances for a similar demand upon some inland places." <sup>1</sup> The first writ of ship money was

Ship  
money,  
first writ,  
20th Octo-  
ber, 1634

<sup>1</sup> 2 Hallam, *Const. Hist. Eng.* 15.

The "parchments in the Tower" might readily have included the following, which exhibits an historical precedent for the ship money:

"1008. Rex Anglorum Aegelredus de ccc. x. cassatis unam trierem, de novem vero loricam et cassidem fieri, et per totam Angliam naves intente praecipit fabricari." <sup>1</sup> Florentii Wigorniensis Monachi, *Chronicon ex Chronicis*, 160.

<sup>1</sup> Freeman, *Norman Conquest*, 647, note LL., cites 3 Co-

directed to the magistrates of London and other seaport towns, and was issued on the 20th October, 1634. It recited the depredations of pirates, "Turks, enemies of the Christian name," and the prevalence of war upon the continent. It enjoined upon the magistrates the furnishing of ships of specific tonnage and equipage by the 1st of the following March. They were empowered to assess all the inhabitants according to their substance, both for the fitting out of the ships and the maintenance of their crews for the space of six months. Refusals to pay were punishable by imprisonment. The writ was issued by the king with the advice of the Privy Council.<sup>1</sup>

The show of precedent was barely an extenuation, not a justification of the demand. As a matter of fact, it was virtually an extortion of a tax, and as such was a distinct viola-

*dez Diplomaticus*, 351, to show that before 1008 a levy of ships was not unknown. Archbishops Aelfric upon his death gave to the people of Wiltshire and Kent a ship. Wiltshire is an inland county. It is justifiable, then, to believe that "per totam Angliam" may be taken literally, and that Ethelred really exacted a ship from every 310 hides throughout England.

<sup>1</sup> Gardiner, *Const. Doc.* 105-108.

tion of the Petition of Right. London, being the only port in the kingdom capable of constructing and equipping ships of the character designated in the writs, was the only town able to make literal compliance with the demand. The rest were obliged to make money payments. But the matter was to come up later in the courts, and the legality or illegality of the writs was there to be decided. As for the occasion of the requisition denominated in the ordinance, that was false. The design was not against "Turks, enemies of the Christian name," but against the Dutch Republic. Charles had proposed a secret treaty with Spain whereby the government of the Lowlanders should be overthrown and its territory be divided between England and Spain.<sup>1</sup> Not only was this act of Charles a breach of his recent great compact with the nation, but it had for its purpose an act of aggression against the people who stood for the highest political ideals then known in Europe, and was based on a lie.

The true occasion for the levy

Sir John Finch, the chief justice of com-

<sup>1</sup> Taswell-Langmead, *Eng. Const. Hist.* 443; Trevelyan, *England Under the Stuarts*, 163.

Second writ, 4th August, 1635.  
Its general application

mon pleas, the same who, as speaker of the commons, had been forcibly held in his chair in order to keep the House in session at the close of the last Parliament, undertook the levying of ship money upon the death of Noy; he advanced the fortunes of the writs by making them applicable to the entire kingdom. On the 4th August, 1635, the demand made its second appearance; it was to cover not only the needs of a navy, but to furnish "a spring and magazine that should have no bottom, and for an everlasting supply for all occasions."<sup>1</sup> Instructions were included in the writs to the sheriffs, by which the ships could be compounded for by the counties, and the amount transmitted to the treasurer of the navy for his Majesty's uses. Payment was to be enforced.

Third writ, 9th October, 1636

A year later, the 9th October, 1636, the third assessment was laid. Murmuring against the writs, which was common enough amongst the lower classes in 1635, now spread to men of great position. The earls of Danby and Warwick and other peers protested to the king, not so much against the amount of the

<sup>1</sup> Clarendon, *History of the Rebellion*, i, 136.

tax, as against the unconstitutional manner of its levy. But Charles found it too profitable a means of income to let go; he was the richer each year by some £200,000.

The courts, however, seemed of contrary mind to the rest of the nation. In November, 1635, at the instance of Sir John Finch, the following extra-judicial opinion was delivered by the judges:—"I am of the opinion that, as when the benefit doth more particularly redound to the ports or maritime parts, as in case of piracy or depredations upon the seas, that the charge hath been, and may be lawfully imposed upon them according to precedents of former times; so when the good and safety of the kingdom in general is concerned, and the whole kingdom in danger (of which his Majesty is the only judge), then the charge of the defence ought to be borne by all the realm in general. This I hold agreeably both to law and reason."<sup>1</sup>

Extra-judicial opinions

On the 7th February, 1637, Charles laid the case before the judges of the Exchequer extra-judicially in much the same terms as the opinion of 1635. He requested an answer

<sup>1</sup> Gardiner, *Const. Doc.* 108, note 2.

to the following question: — "When the good and safety of the Kingdom in general is concerned, and the whole Kingdom in danger, whether may not the King, by writ under the Great Seal of England, command all the subjects of our Kingdom at their charge to provide and furnish such a number of ships, with men, victuals, and munition, and for such time as we shall think fit for the defence and safeguard of the kingdom from such danger and peril, and by law compel the doing thereof, in case of refusal or refractoriness: and whether in such a case is not the King the sole judge both of the danger, and when and how the same is to be prevented and avoided?"<sup>1</sup> The opinion of the judges was ostensibly unanimous in favor of the crown; Coke and Hutton as a matter of fact dissented, but subscribed on the principle that the opinion of the majority should be that of the whole body.

In the face of this sweeping and conclusive opinion delivered privately to the king, there was apparently no hope for any one who should have to answer in that court for refusal.

<sup>1</sup> Gardiner, *Const. Doc.* 108, 109.

Shortly thereafter, however, such a case came up. John Hampden, a gentleman of Buckinghamshire, had refused to pay the assessment of 20s. which was laid upon some of his lands, and by reason of his refusal was summoned to the Exchequer. He appeared and answered to the charge in November, 1637. He was defended by the brilliant Oliver St. John and Mr. Holborne. Solicitor General Littleton and Attorney General Bankes conducted the case for the crown.

Hampden's  
Case, 1637

The question upon which the case was argued may be phrased as follows: "Whether the king had a right on his own allegation of public danger to require an inland county to furnish ships, or a prescribed sum of money by way of commutation, for the defense of the kingdom?"<sup>1</sup> The argument for Hampden can be summed up under five heads:

I. The law and constitution of England provide certain ordinary revenues for the defense of the realm. These comprehend the military forces provided by those holding lands by military tenure; the liability of the Cinque Ports and others holding similarly

The case  
for the  
defendant

<sup>1</sup> 2 Hallam, *Const. Hist. Eng.* 23.



to provide a quota of ships, by reason of their tenure; the feudal and other revenues inherent in the crown; the customs on wool and leather, and tunnage and poundage, and other special dues which were wont to be granted to the king in time of danger.<sup>1</sup>

II. The law and constitution of England provide certain extraordinary revenues when the ordinary revenues should prove insufficient, and for the defense of the realm. Chief among these were the subsidies and aids which were granted in Parliament. That Parliament was the only body capable of levying these charges was exhibited by the fact that the kings of England were wont to denominate their arbitrary exactions as "loans" and "benevolences."

III. The statutes of the realm provided in most emphatic language that no tax should be levied on the subject without the consent of Parliament. The charter of the Conqueror, Magna Carta, especially *Confirmatio Cartarum* and *De Tallagio non Concedendo*, the statutes

<sup>1</sup> Mr. St. John did not enter into a consideration of the legality of the modern impositions of the outports, levied by authority of the Crown.

passed subsequently under Edward III, and more than all the others, the Petition of Right, showed the utter illegality of the ship money.

IV. The citations by the crown of exactions similar to the ship money did not demonstrate the lawfulness of the demand; they merely showed precedents of such a general levy. The case must be decided by law, not by precedents, — "*judicandum est legibus non exemplis*."

V. In the present instance, the perils which the king cited were insufficient to justify an unusual demand for money. The precedent of the arbitrary actions of Queen Elizabeth at the time of the Armada could in no wise be taken as a justification for so great an exercise of the prerogative when the nation was at peace with the world; the piratical acts of Turkish corsairs or even the insolence of rival neighbors could not be reckoned amongst those imminent perils for which a Parliament could provide too tardily.<sup>1</sup>

<sup>1</sup> The digest of the argument here given is based upon that of Taswell-Langmead, *Eng. Const. Hist.* 446, 447, who follows closely 2 Hallam, *Const. Hist. Eng.* 23-27. Extracts from St. John's speech are given in Gardiner, *Const. Doc.* 109-115.



A judgment for  
the crown

The judgment was in favor of the crown seven to five. Three of the minority based their decision upon the particular rather than on general grounds; Croke and Hutton, however, denied the general contention of the crown absolutely. Croke maintained that taxation save by authority of Parliament is contrary to the common law and to the statutes; that the exaction could not be defended upon the plea of imminent danger; and that the extension to inland counties was not legal or warranted by any legal precedent. The seven judges whose opinions were favorable to the king, upheld the prerogative of the crown as against the legislative power of Parliament. Sir John Finch, chief justice of the common pleas, stated their attitude clearly. "No act of Parliament," he said, "can bar a king of his regality, as that no lands should hold of him, or bar him of the allegiance of his subjects or the relative on his part, as trust and power to defend his people; therefore acts of Parliament to take away his royal power in the defense of his kingdom are void; they are void acts of Parliament to bind the king not to command the subjects, their persons, and goods,

and I say their money too; for no acts of Parliament make any difference." <sup>1</sup>

The effect of this decision upon the minds of the people was immediate; it changed the payment of the ship money from a semi-voluntary gift to the king into an extortion enforced by him. Previously they had supposed that the ship money was paid out of sufferance, that if it became too heavy, an appeal to the courts would be sufficient to remove it; now they felt that the king had them by the throat and could force them to do as he willed. Never was there a clearer issue; the king and his prerogative against the commons and their long-developing rights; the power of the king to levy taxes upon his own arbitrary authority against taxation by the will of the taxed as expressed in Parliament.

The Scottish rebellion of 1638 which was waged for the defense of religious freedom, and the interval of peace, beginning the 18th June, 1639, which was used by Scots and English alike as a period of armament, proved too

<sup>1</sup> Taswell-Langmead, *Eng. Const. Hist.* 448. <sup>2</sup> Hallam, *Const. Hist. Eng.* 30.

The Short  
Parlia-  
ment, 1640

much for Charles's irregular financial supply. Reluctantly he called his Fourth Parliament, commonly known as the Short Parliament, for the 13th April, 1640. The assembly was, strange to say, most moderate and loyal to the king. Charles through the ex-Speaker Sir John Finch, now Lord Keeper, asked for a large supply immediately, saying that he would listen to grievances afterwards.<sup>1</sup>

The commons recalled instances wherein the royal word had been broken, and preferred to withhold supply until the end of the session, according to their familiar habit. They proceeded to inquire into the Hampden case, and considered in detail the various occasions upon which the law had been broken during their eleven years' recess. They appointed a committee to confer with the lords over a long list of grievances, divided into the three departments of innovations in religion, invasions of private property, and breaches of parliamentary privilege.<sup>2</sup> At this Charles came forward with a gigantic piece of tactlessness; thinking he saw a hole through which he could escape, he tried to win the

<sup>1</sup> 2 *Parl. Hist.* 532, 533.

<sup>2</sup> 2 *Ibid.* 561, 562.

lords to his standard. Applying to them, they voted and communicated to the House of Commons that "his Majesty's supply should have the precedency, and be resolved on before any other matter whatsoever."<sup>1</sup> To the commons this appeared an arrant breach of privilege, it being their right that money bills should originate in their House. The lords immediately adopted a conciliatory tone; they renounced any intention of offending the commons. "The bill of subsidies," they admitted, "ought to have its inception and beginning in your House; and that when it comes up to their lordships, and is by them agreed unto, it must be returned back to you and be by your House presented."<sup>2</sup>

Clash be-  
tween the  
Houses

The king had reason to regret his intrusion since the dispute which he had caused delayed a supply from the commons so much the more. He now had recourse to a compromise. He offered the withdrawal of his claim to ship money in consideration of a grant of twelve subsidies,<sup>3</sup> payable in three years. The commons, perceiving that the proposi-

<sup>1</sup> 2 *Parl. Hist.* 362, 363.

<sup>2</sup> 2 *Ibid.* 563.

<sup>3</sup> 2 *Ibid.* 570, 571.

tion, if acceded to, involved the tacit admission that the ship money had been justly laid, insomuch as its removal was obtainable only by purchase, refused to enter into the agreement. But the effect of the message was not quite lost; on the contrary it seemed as though the king would shortly receive his grant. At the moment when the commons were on the point of deciding upon a supply, the amount to be determined subsequently, Sir Henry Vane, secretary of state, precipitated a crisis. He asserted that the supply would not be accepted unless it were to the amount and in the manner designated in the king's message.<sup>1</sup> The next day, the 5th May, the king dissolved his three-weeks-old Parliament, to his own great distress and the trepidation of the nation.

Dissolu-  
tion of  
Parlia-  
ment

Charles employed the six months which intervened between the dissolution of Parliament and the summons of the Long Parliament in his usual occupations. He locked up several members of the House. He exacted forced loans, created new monopolies, and levied ship money. Prosecutions followed

<sup>1</sup> 2 *Parl. Hist.* 582, 584.

swiftly upon refusals to pay. "Coat and conduct money," a new exaction from the counties, was demanded to cover the traveling expenses of recruits on their way to fight against the Scots. He obtained six subsidies from the clergy whom he illegally kept in convocation after the dissolution of Parliament.

The wind of opposition was rising to a gale. With the sitting of the Long Parliament, which convened on the 3rd November, 1640, the tempest broke. The immediate occasion of the summons was the universal demand of the people and the peers for a session of Parliament, coupled with emptiness of the treasury which came with the commencement of the disastrous Scottish war. The composition of the commons was overwhelmingly anti-regal;<sup>1</sup> the popular leaders had been at work in the counties ever since the dissolution of the Short Parliament looking to the return of a strong majority in opposition to the king. The assembly convened full of the idea that "they had now had an opportunity to make their country happy by removing all grievances and

Sitting of  
the Long  
Parlia-  
ment, 3rd  
November,  
1640

<sup>1</sup> See the list of members in 2 *Parl. Hist.* 597-629.

pulling up the causes of them by the roots, if all men would do their duties." <sup>1</sup>

Parliament lost no time in setting about its work. Proceedings were immediately instituted looking to the impeachment of the Earl of Strafford, Archbishop Laud, Finch, and six of the judges who had figured in the ship money case. Various victims of the tyrannical jurisdiction of the Star Chamber were set at liberty. The commons exhibited their uncompromising hostility to the king by voting assistance to their "brethren" the Scots, whose army was in possession of much territory on the English side of the border. They granted them £25,000 a month as long as their stay in England should be needful, and in addition £300,000 as an indemnity.

With such acts of open opposition to the king in process, it was natural that Parliament should set itself to clean up all the abuses which of recent times had crept into the government. Its actions were not subversive of the constitution; on the contrary it left unassailed many prerogatives of the king.

<sup>1</sup> Taswell-Langmead, *Eng. Const. Hist.* 455, quoting 1 Clarendon, *Hist.* 171.

On the 22nd June, 1641, Parliament granted to the king tunnage and poundage for a length of time somewhat less than two months <sup>1</sup> and in the same bill declared, "that it is and hath been the ancient right of the subjects of this realm, that no subsidy, custom, impost, or other charge whatsoever ought or may be laid or imposed upon any merchandise exported or imported by subjects, denizens, or aliens without common consent in Parliament." <sup>2</sup> The Act prescribed also the punishment which should be inflicted upon officers who in time to come should exact payments not sanctioned by Parliament. They were to "incur and sustain the pains, penalties, and forfeitures ordained and provided by the Statute of Provision and Premunire made in the sixteenth year of King Richard II, and shall also from thenceforth be disabled during his life to see or implead any person in any action real, mixed, or personal, or in any court whatsoever." Thus was it enacted that tunnage and poundage exacted by authority of the crown was illegal, and protected merchants from being sued

Royal  
exaction of  
tunnage  
and  
poundage  
declared  
illegal

<sup>1</sup> The time was from 25th May, to 15th July, 1641.

<sup>2</sup> The Act is given in Gardiner, *Const. Doc.* 88-91.



by the customs officers in case of refusal to pay the unlawful imposition. The king received tunnage and poundage by six subsequent acts for short terms down to the 2nd July, 1642.

The Ship  
Money  
Act, 7th  
August,  
1641

Six weeks later, on the 7th August, 1641, Parliament turned its attention toward the matter of ship money. On that date it passed an "Act for the declaring unlawful and void the late proceedings touching Ship-Money, and for the vacating of all records and process concerning the same."<sup>1</sup> The act cites the Hampden Case and others of a similar nature and outlines the plea of the royal prerogative as given in the extra-judicial opinion of the judges. It condemns "all which writs and proceedings" as being "utterly against the law of the land." In greater detail it enacts "that the said charge imposed upon the subject for the providing and furnishing of ships commonly called ship money, and the said extra-judicial opinion of the said justices . . . and the said judgment against John Hampden, were and are contrary to and against the laws and statutes of this realm, the right of property, the liberty of the subjects,

<sup>1</sup> The Act is given in Gardiner, *Const. Doc.* 115.

former resolutions in Parliament and the Petition of Right." The act also provided that all particulars desired in the Petition of Right should be "strictly holden and observed as in the same Petition they are prayed and expressed." The ship writs and the Hampden judgment are specifically annulled.<sup>1</sup>

Thus came to an end the long chain of statutes which Parliament from its inception had been forging to fetter the arms of the king straining toward the prize of arbitrary taxation. The virtue of the Long Parliament is thus commented upon by Hallam: "In the first place," he says, "it will appear . . . that they made scarce any material change in our constitution, such as it had been established and recognized under the house of Plantagenet. . . . Thus in by far the greater part of the enactments of 1641, the monarchy lost nothing that it anciently possessed; and the balance of our constitution might seem rather to have been restored to its former equipoise,

<sup>1</sup> By subsequent statutes, an end was put to purveyance, distraint of knighthood, and forest extension. Parliament then came forward with a grant of six subsidies and a poll tax equivalent to six subsidies more.



than to have undergone any change. . . . It is to be observed in the second place, that by these salutary restrictions, and some new retrenchments of pernicious or abused prerogative the Long Parliament formed our constitution such nearly as it now exists."<sup>1</sup> The legislation of 1641 in effect restored to Parliament what power it nominally held two centuries before.

The  
Grand  
Remon-  
strance,  
1st Decem-  
ber, 1641

A current of reaction now set in favorable to the king. The leaders in the commons discovered that the popular support to their measures was becoming weak, that the royalist party was recruiting adherents from the former supporters of the opposition, that their own backing was by a party, not by the nation. With the hope of winning back full national adherence to Parliament, the Grand Remonstrance was framed by the House of Commons and presented to the king, on the 1st December 1641.<sup>2</sup> It purported to show the present state of the kingdom, the evil conditions which Parliament had succeeded in bettering, and the darkness of the future, if support were

<sup>1</sup> & Hallam, *Const. Hist. Eng.* 138, 139.

<sup>2</sup> Gardiner, *Const. Doc.* 127-155.

withdrawn from Parliament. With respect to taxation, the Remonstrance recites the various illegalities and abuses which the crown had practiced and the steps which the commons had taken to provide for their correction. For future safeguard against their return it suggests "that for the better preservation of the liberties and laws, all illegal grievances and exactions should be presented and punished at the sessions and assizes; and that judges and justices should be sworn to the due execution of the Petition of Right and other laws."

With the delivery of the Grand Remonstrance, the contest for Parliamentary taxation became of relatively small moment in the great conflicts of the Puritan Revolution. The struggle over the impeachment of Pym and the popular leaders in the House, the attempt of the king to secure absolute command of the militia, the battles on the field and in the House of Commons during the Civil War, the events which led up to the execution of Charles—these were neither immediately caused by the conflict over taxation nor did they have immediate effect upon it. Taxation up to 1641 was a prime cause of

The  
Puritan  
Revolution

opposition to the crown; thereafter it ceased to be of so great importance.

Accession  
of Charles  
II, 1660

Charles II came to the throne in 1660 after the English people had made an eleven years' trial of a military despotism under a good and moderate despot. His first Parliament, that of 1660, granted him the proceeds of the customs for life. During the period of the Commonwealth, the freedom from the feudal charges had been most agreeable to those holding of the crown. Consequently, this Parliament set itself to regulate the confused system of military tenure by the simple expedient of abolition. The Great Contract which had been proposed under James I for the same purpose, had been advocated in vain. Now, however, the effort was successful. The feudal incidents, such as wardships, marriages, knight's service, as well as the three feudal aids, knighting the king's son, ransoming the king, and furnishing dowry for his eldest daughter, were done away with. By this great deprivation, the royal revenue was naturally much prejudiced. Parliament made up the loss by granting to the crown an hereditary excise on beer and some other liquors,

increasing the royal revenue to the annual value of £1,200,000.<sup>1</sup>

In 1665 the expenses incident to the Dutch War made it possible to establish a principle which had been touched upon from time to time since the days of Henry III. Sir George Downing, in the subsidy bill of that year, introduced the provision that the money raised in accordance with the bill, £1,250,000, be applicable solely to the prosecution of the war, and that the money could not be paid out by the Exchequer save by special warrant stating that as the purpose of the payment. Clarendon opposed the measure as an encroachment upon the honor of the crown, but Charles himself was not averse to it, mainly by reason of his belief that the promised revenue would be thus more acceptable to bankers as the security for loans. The appointment in the following year of a commission to examine the public accounts in order to determine the faithfulness with which the provision was carried out, clinched the principle underlying its original passage. The bill was the natural conse-

Appropriation of  
supplies,  
1665

<sup>1</sup> For further details see Taswell-Langmead, *Eng. Const. Hist.* 483, 484; and 2 Dowell, *Taxation and Taxes*, 8 et seq.

quence of the liberty of appropriation enjoyed under the Commonwealth. The exercise of the principle of appropriating supplies in detail was not carried to its full extent until after 1689. Its importance is difficult to overestimate. It placed the executive power in a position of perfect dependence upon the will of Parliament, for the money requisite for any administrative act was to be forthcoming only in accordance with the previously expressed intent of Parliament.

Reign of  
James II,  
1685-88

The reign of James II, who came to the throne in 1685 at the death of Charles, was retrogressive. He assumed the crown with the full intention of exercising arbitrary authority, and if he had not tried to substitute Catholicism for the Established Church, there is little to show that he would not at least for a time have succeeded. Before the summons of his Parliament, which he called reluctantly notwithstanding a lapse of five years under Charles without one, he continued to himself the payment of the customs duties by proclamation. This illegal act met with no serious objection from Parliament when it met. Nor was this all; Parliament

raised the permanent revenue of the king to the annual amount of £2,000,000, and on the suppression of Monmouth's rebellion, gave him £700,000 more wherewith to support a standing army. Thus did Parliament make James financially independent, provided he was content to live within reason, and gave him an army in addition. This was a combination of powers which on the Continent had sufficed to create despotisms.

That it did not create a despotism in England is not greatly to be wondered at. James set himself to fighting the battle of the Roman Catholic church in England. The result was almost immediate disaster. On the 5th November, 1688, William, Prince of Orange, and Stadtholder of the United Provinces, landed at Torbay in Devonshire. He was requested by seventy of the lords spiritual and temporal (all who were then in London), by the members of the House of Commons which met in the last Parliament of Charles II, and the corporation of the City of London, to assume the provisional government of the kingdom pending a session of Parliament. This was called for the 22nd January, 1688-

William  
and Mary

89. On the 13th February following, a tender of the crown was made to William, on the conditions denominated in the recently framed Declaration of Right. In it the illegal acts of King James were recited and the announcement was made that the throne had been abdicated; it was asserted also that certain specified acts of King James were illegal, and a resolution was appended settling the crown on William and Mary. William, speaking for himself and for the Princess Mary, "thankfully accepted what had been offered them."

The Bill  
of Rights,  
1689

The Declaration of Right, with some slight but essential changes, was incorporated at the second session of this Parliament, the 25th October, 1689, in statutory form known subsequently as the Bill of Rights.<sup>1</sup> In the matter of taxation, it sums up in a few clauses the whole principle which had been in course of evolution since the German chieftains received gifts of cattle and fruits from their people.

It states that King James "did endeavor to subvert and extirpate . . . the laws and

<sup>1</sup> The text is in Taswell-Langmead, *Eng. Const. Hist.* 512-518 and in Adams and Stephens, *Sel. Doc.* 462-469.

liberties of this kingdom . . . by levying money for and to the use of the crown, by pretense of prerogative, for other time and in other manner than the same was granted by Parliament." Then follows the definite assertion, "that levying money for or to the use of the crown by pretense of prerogative, without grant of Parliament for longer time or in other manner than the same is or shall be granted, is illegal." The clause which gave to these statements the force of law, emphasizes the power of Parliament. "All which their Majesties are contented and pleased," so it goes, "shall be declared, enacted, and established by authority of this present Parliament, and shall stand, remain, and be the law of this realm forever; and the same are by their said Majesties, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in Parliament assembled, and by the authority of the same, declared, enacted and established accordingly."

With the passing of the Bill of Rights the principle was vindicated in its fullness that Parliament rather than the crown has the

power to tax. Within Parliament itself the power of laying taxes had undergone further differentiation in that the House of Commons claimed the sole right of initiating tax levies. The theory deduced therefrom, that the House of Commons has sole control over money bills and that interference by the House of Lords is an assumption of power beyond the constitutional rights of that House, came up for fuller definition 220 years later. The corollary principle that Parliament has the power to appropriate supplies for specific purposes and that it can demand an accounting for the money so appropriated were accorded general acquiescence then and thereafter.

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